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MARTIN'S

PRACTICE OF CONVEYANCING;

WITH

Forms of Assurances.

BY

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PREFACE.

WHEN we consider that the Art of Conveyancing consists in applying the principles of alienation to practice by means of appropriate instruments or assurances, it is at once obvious that, to the practitioner, the Forms of Conveyancing constitute an important branch of study. It is one, however, which is very often neglected. Many are content with knowing no more of the subject than is just sufficient to enable them to use the Forms as they use their watches, without inquiring into the mechanism within; satisfied, so to speak, if they can *wind them up.*

This is to be accounted for partly from the supposed dryness of the subject; but chiefly, I suspect, from an opinion common among students, that while they have a genuine and authentic collection of settled Forms, any profound study of them is unnecessary.

It may be remarked, however, that many subjects for which we afterwards feel the keenest relish, are often at first exceedingly distasteful. What, for instance, can be more repulsive in the beginning than

the learning of a foreign language? and yet, when once we have acquired the skill to use it as an instrument of thought, how exquisite the enjoyment, enduing us almost with the consciousness of a new sense. And paradoxical as it will sound to some, I am convinced that even the Forms of Conveyancing may become not merely a useful, but an interesting subject of study. It is of the *importance*, however, of the study in question that I wish more immediately to speak; for if that be granted, however dry the subject, no one who cares for his own professional character, or success in life, will neglect to prosecute it.

Now, whenever we make use of any Form, two things are to be considered: first, whether it adequately expresses the intention of the parties; and, secondly, whether the intention so expressed can, with reference to the existing laws, be carried into effect.

The first of these objects, though it may be reckoned a mere matter of style or composition, for which any educated man is fitted, does in fact require us to possess, in order to attain the end in view, a complete command of the technical language of Conveyancing. It has been objected against this language, that it is *too* technical; but the truth is, the more technical the nomenclature of any science is (assuming that each term has really a definite scientific meaning), the more exact and perfect is the science. To introduce into legal instruments the language employed on ordinary occasions, might, perhaps, enable the

draftsman, ambitious of such things, to set forth his skill in *fine writing;* but, assuredly, such a display would ultimately be at the expense of his client. Words, indeed, which are in common use, are not only often wanting in precision, but subject to continual variation in meaning. The sound may be the same, while the sense is changed; just as the coins of the realm continue stamped with the same denomination of value, though they have lost both purity and weight (*a*). In truth, a fixed standard of value is not more important to the political economist, than is a fixed nomenclature to the conveyancer: without the one, as without the other, the contracts of mankind would be perpetually frustrated. And I know of no other way in which the language of Conveyancing can be acquired than by a patient study of its Forms.

But if, with this view, such a study be deserving of attention, how much more important is it in regard to the other consideration I have mentioned, viz. whether the intention of the parties, as embodied in any given instrument, is warranted by the existing laws.

Many, indeed, as already remarked, take this question for granted, because they have followed some settled Form. It is undoubtedly desirable, for several reasons, to adhere as closely as possible to

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(*a*) The silver pound, which at the Norman conquest was worth twenty shillings, had in the reign of Elizabeth been reduced in value at least two-thirds; and yet it was still called *a pound.*

established Forms; they have received a settled construction, and occasion an uniformity in practice which produces both certainty and dispatch. Selden tells a story of some mathematicians, who could, with one stroke of their pen, make an exact circle, and with the next touch point out the centre: is it therefore reasonable, he asks, to banish all use of the compasses? Now, settled Forms are a pair of compasses. But if any one who draws diagrams (or drafts) with the aid of compasses, should, on that account, neglect to study the properties of his figures, he had better at once banish the use of such instruments; and, like the mathematicians in the story, betake himself to his pen, or abandon the subject altogether.

The necessity, indeed, of habitually considering the Forms of Conveyancing with reference to the actual state of the law, is the more liable to be slighted from the circumstance, that many are apt to reckon the *legislature* as the only source of changes in the law, overlooking the constant influence of what the foreign jurists rightly distinguish from legislation, and denominate jurisprudence. It is a maxim, oftener repeated than understood, that the province of the judge is to declare the law, and not to make it. But whatever be the theory of our system, let us consider its actual working in practice; and we shall then find that, while the statute-book is only occasionally consulted, the reports of adjudged cases are habitually referred to. This is one of the consequences of a customary or common law, such as that which obtains in this country, and whose characteristic

features I have elsewhere endeavoured to describe (*a*): it contains within itself a principle of growth; and, like our language, is continually undergoing a progressive development and change.

The foregoing considerations, while they evince

(*a*) "The Common Law is not so much the contrivance or result of any human wisdom, acting upon an enlarged experience, as the production of time, the growth of circumstances, the offspring of the various necessities which the manners, the religion, and the commerce of the people have at different times imposed. Antecedently to all law, (at least all *positive* law strictly so called), men are governed by certain usages or customs, not created, but spontaneously springing up; and which bind the people, not by virtue of any express sanction of the supreme power, but by the force and authority of public opinion, which is to them a rule of positive morality. But as society advances, as legal relations increase and multiply, and men's minds are opened and liberalized by ingenuous science, those usages or customs, or, as Lord Bacon calls them, 'laws written in living tables,' which grew up with the growth of society, are gradually transmuted, by means of judicial decisions, into legal rules, clothed with all the authority of positive law. By the exercise of this important and constitutional function of the judges, acting as ministers of the state or supreme power, much of what is commonly called *jus non scriptum* (an expression borrowed from the Roman jurists) has, in fact, become written law, embodied and expressed in the records of our tribunals, and published in the reports. Originally, however, judicial decisions rested solely on the oral testimony of the suitors or witan, who bore evidence to the judgments which they or their predecessors had pronounced: they remembered and 'recorded' them. In progress of time, and as the use of letters became more common, that which had formerly been confided only to living testimony was, for greater certainty, committed to writing, and thus perpetuated as a 'record of court.' To give to adjudged cases greater publicity, they were at length put forth in certain periodical publications called 'Reports,' of which a regular series, in print, from the reign of Edward the Third inclusive, is still extant."—Vol. I. Introduction, sect. 2, art. vii.

the importance of the study in question, will serve to show how utterly irrelevant is the comparison which has been often made between the English Forms of Conveyancing and those of France, to the prejudice, it is supposed, of the former. For this is not an absolute, but a relative question; and, consequently, can only be determined by reference to the system to which each Form exclusively belongs. To find fault with the English Forms for wanting the brevity of the French, is as if any one should censure our countrywomen for wearing long shoes while the Chinese wear short ones,—forgetting that shoes must be fitted to the feet.

In the Forms of Conveyancing, *perspicuity* is of such paramount importance, that all elliptical expressions, and any thing like a suggestive style, such as is naturally adopted in conversation, ought to be scrupulously shunned. And hence Horne Tooke has justly remarked, in his Diversions of Purley, that "legal instruments have always been, and always must be, remarkably more tedious and prolix than any other writings, in which the same clearness and precision are not equally important. For abbreviations open a door for doubt; and, by the use of them, what we gain in time, we lose in precision and certainty." How far the existing Forms of Conveyancing are capable of abbreviation without losing part of their substance, is a very important question, but one which cannot be discussed within the limits of a preface.

I have only to add my best acknowledgments to

those friends who have communicated to me their MS. Collections of Forms, from which I have derived considerable assistance; assuring them, whatever may be the reception of the work, I shall ever retain a grateful sense of their kindness.

THOMAS MARTIN.

4, *Lincoln's Inn, Old Square,*
Trinity Vacation, 1837.

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For title to freeholds in release in fee, with proviso for enjoyment by mortgagor until default. (In mortgages) 740
For title to freeholds and copyholds; with a covenant to join in sales and conveyances to purchasers. (In mortgages, upon trusts for sale) 744

For title to freehold estate. (In settlements) . 748
For title to freeholds and copyholds. (In settlements) 751
For further assurance. (In settlements) . . 752
Against incumbrances 752
Against acts preventing assignments, &c. . . 753
To surrender copyholds; with variations. (In purchase deeds) 753
To surrender copyholds. (In mortgages) . . 755
To surrender copyholds. (In annuity deeds) . . 756
To surrender copyholds. (In settlements) . . 757
By vendor for the release of his wife's dower, and in the meantime to indemnify purchaser 757
By husband to procure waiver of wife's equity (by examination in Chancery) to dividends bequeathed to her for life 758
That infant heir when of age shall confirm and discharge premises from his share of purchase money . 758
For enjoyment and further assurance to be permitted and made by sons and issue male, and trustees for them 759
That first tenant in tail, on attaining twenty-one, shall bar estate tail, &c., and convey to the purchaser in fee; and that younger children or issue of marriage, or other persons entitled to portions, on attaining 21, shall release from payment of same . . . 760
That children when of age, or their heirs or devisees, shall convey their interest in one undivided eighth part of hereditaments to the purchaser of the other parts 761
That persons interested under the limitations in a will shall, when of age, convey, discharged of estates tail and remainder over; to permit names to be used in any action of ejectment to recover possession; for indemnity against claims under recited will; and for repayment of purchase money on nonperformance of covenants upon having reconveyance . . . 762
To do all acts required for enlarging estate tail in copyhold into a fee, and assuring same . . . 765
To refund consideration money with interest in case of eviction within one year 765

That in case vendor of certain undivided parts of an estate should at any time become seised of any of the remaining parts, the purchaser shall have the option of purchasing same at a stipulated price . . 766
To indemnify purchaser from legacy, and procure release from legatee; such release to be enrolled in Chancery for safe custody 767
To obtain a surrender of term of years, and conveyance of the estate of another, as far as concerns the estate in question; to produce discharges for portions, and to indemnify purchaser 768
To pay portion and maintenance, and indemnify purchaser therefrom; and that after payment, term shall be assigned in trust for purchaser; and in the meantime (subject to portion and maintenance) be in trust for him 769
To pay rent and observe covenants, and indemnify lessee therefrom 770, 771
To observe the covenants contained in a former lease between the same parties as if they had been repeated in the present 772
By assignee to perform covenants in original lease (except covenant for payment of rent), and to indemnify assignor 773
By assignor to pay entire rent and perform covenants as to part of premises in original lease not assigned, and to indemnify assignee 774
To indemnify assignee from evictions, &c. on account of breach of covenants in lease 774
To indemnify against fee-farm rent, with grant of power of distress 775
To indemnify against the repairing of a chancel, and payment of a sum of money 776
To indemnify against two annuities, with appropriation of a fund to answer them 776
To pay an heir-at-law a sum of money on his attaining 21, and executing conveyance; with interest for the same in the meantime 777
Not to exercise power to raise portions for children of second marriage, or create term for that purpose; and release of such power 778

Not to erect buildings against part of premises . 778
Not to erect a mill, &c. to deteriorate one conveyed, and to pay liquidated damages for any injury, such covenant not to be a waiver of right to abate nuisance, or of procuring injunction 779
By judgment creditor to stand possessed of judgment in trust &c., and acknowledge satisfaction . . 779
By tenant in tail in remainder not to bring actions, &c. against tenant for life in possession, for cutting timber; and that money produced by sale of timber during life of tenant in possession, if laid out in real estates, or appropriated as money, shall belong solely to such tenant 780
To pay mortgage money. (In first witnessing part) . 780
To pay mortgage money. (Immediately to precede the covenants for title) 781
To transfer stock advanced on mortgage . . . 782
To pay mortgage money on demand . . . 782
To pay balance of account. (In mortgage to bankers) 783
That till payment of certain sums on mortgage and interest, sugar, rum, (except &c.) shall be shipped and consigned to certain persons to sell, and apply produce, and in trust to answer interest and pay certain monies and interest, and instalments; and surplus to mortgagor; with power to consignees to retain interest of debt due to them, not exceeding a certain amount, out of produce, in preference to interest and instalments, &c. 783
By mortgagor to convey and assign apprenticed labourers, &c. to be purchased from time to time, and being on plantation, subject to proviso of redemption, and re-assignment on reduction of debt . . . 785
By mortgagor, that if principal and interest be not paid within the year, he will not discharge or redeem the mortgage until a certain time, unless called upon by the mortgagees 787
By mortgagee that mortgagor shall have the privilege of redeeming a prior mortgage 787
By mortgagee, that leases granted by mortgagor shall be binding, and for confirmation of them . . 788
To insure against fire. (In mortgages) . . 789

By mortgagee to pay premiums on policy of insurance already effected; and in case of its becoming void, to effect a fresh one; with a declaration, that, in the event of the premises being burnt down or damaged, money to be received under the policy shall be laid out in rebuilding or repairing the premises . . 789
To assure life for the benefit of a mortgagee . . 791
To insure life in a certain sum, in case there shall be three children of a marriage; in a further sum, if four children; and in a further sum, if five; and to assign policies to trustees; but the covenantor not to be obliged to keep the same on foot in certain events; with proviso for enabling trustees to effect such assurances on failure of covenantor, and pay expenses out of trust estate. (In settlements). . . 792
By receiver to collect and apply rents . . . 794
Between mortgagor and mortgagee not to revoke the powers of receiver; and in case of death or disability, to appoint another; with a proviso for exempting mortgagee from liability for receiver's defaults, and subjecting mortgagor to losses 795
To pay rents and perform covenants, and when any of the lives drop, to renew in the names of the trustees, paying fine and expenses 796
By mortgagor to renew, and assign renewed leases to mortgagees, with provision, in case of mortgagor's neglect, for mortgagees to surrender leases and take others in their own names . . . 797, 798, 800
To obtain renewed lease, with a license to demise; and thereupon to demise the same to mortgagee upon the trusts of original lease, and to pay fines . . . 801
By grantee of annuity that grantor shall be at liberty to repurchase after a certain time, upon giving six months' notice; and he will in that event release and assign the premises 802
By father and son to pay annuity (after the death of the son) during the joint lives of certain persons. (In settlements). 803
By intended husband, that during joint lives of intended

wife and her mother, he will not reduce wife's unsettled property into possession 803
For payment of annuity; such covenant to be an auxiliary security only 803
That grantor shall have the option of repurchasing rent-charge, either in one sum or in several; and that, on such repurchase, the whole or part of the land shall be discharged therefrom: if part only purchased, then to have the option of exonerating lands released from a just proportion of the residue of rent 804
That residue of hereditaments not conveyed shall be chargeable with rent in exoneration of land conveyed 805
By jointress not to distrain on certain part of the estate charged with jointure, sold free from incumbrances . 805
Not to claim jointure out of part of lands; and if claimed, such shall be released therefrom, with a proviso that residue of lands shall remain subject to the jointure 805
Direction and appointment by request to a trustee, and covenant by the trustee to stand possessed of premises for residue of a term to the extent of the right of another, upon trust, to indemnify others, and their heirs, and the premises from payment of an annuity, with a reservation of trustee's prior privilege of indemnity 806
By wife's father, to leave her a sum which, with other monies she is entitled to, shall amount to a specified sum 807
That all the property to which intended wife may become entitled during coverture shall be for her separate use 808
That wife, if survivor, may purchase husband's residence at a sum named 809
By intended husband, that his executors shall pay a sum to the trustees, to be held by them upon certain trusts, within a given period after his decease . 810
To pay legacies and mortgage money, and procure assignment of term 811
To discharge money land from the trusts declared thereof, or to cause the money to be invested in the

purchase of lands, and to convert the same, by means of sale, into money 812
To pay trustees such a sum as, with what will arise from sale of hereditaments, will make up the amount directed to be raised 813
For production of title-deeds 814, 816
Lien of covenant by two severally for the production of deeds in different schedules 814
Proviso to exonerate covenantor on procuring purchaser to enter into like covenant for production of deeds . 815
By mortgagee for re-delivery of title-deeds to mortgagor, on repayment of mortgage money, and for producing them in the meantime 816

ERRATA ET CORRIGENDA.

Page 5, line 18, for "ꝟpjice" read "ꝟepjice."

9, l. 17, for "donor" read "owner."

32, l. 13, Mr. Pigot's Treatise on Common Recoveries and Precedents in Conveyancing were both posthumous publications.

34, l. 12, add—"When Booth was on the decline, Mr. Duane rose to considerable eminence; respectably skilled in his profession, and singularly industrious. He was the editor of Fitzgibbon's Reports, and supplied the publisher of Bacon's Abridgment with the article 'Common.' He was a polite scholar, of acknowledged taste in painting and music, and the most skilful medallist in England. His collection of medals was famous over Europe. He sold his cabinet of Syriac medals to Dr. Hunter, by whom it was bequeathed to the University of Glasgow." Butler's Historical Memoirs, iv. 460, 3rd edit. Encycl. Brit. art. Medals, xiv. 487, 7th edit.

PRACTICE OF CONVEYANCING.

Forms of Assurances.

INTRODUCTION.

I. IN distributing the Forms of Assurances contained in the following collection under the twofold division of "Common Forms" and "Precedents,"—topically arranged,— my object is to furnish the practitioner, first, with the *materials* for drafting; and, secondly, with various *models* of drafts, adapted to the usual exigencies of practice. There is no novelty, indeed, in this classification, for it has often been adopted by practitioners, and is said, though perhaps not quite correctly, to have been first introduced by Mr. Preston: it possesses, however, many obvious advantages over the usual plan of most printed collections, which, as they contain only precedents or drafts used on former occasions, cannot furnish more than the particular varieties incident to each transaction. Such collections may very well serve to suggest the frame or form of instruments; but to draw from them exclusively—a practice much exploded among well-educated draftsmen—is as if a builder, instead of having his masonry ready at hand,

Plan of the present collection of Forms.

should be obliged on all occasions to pull down some existing fabrics, and to construct a new one with the materials of the old.

Sources for a history of Forms of Assurances.

II. It may be expected, perhaps, that some account should be premised of the history of Forms of Assurances, and of the principal writers who have contributed to the improvement of this branch of legal practice. Materials for such an essay, though by no means superfluously abundant, are not wanting.

Textus Roffensis.

The Textus Roffensis, or register of the church of Rochester, which we owe to the successive labours of

Chartularium Hemingi.

Ernulphus, Sir Edward Dering, and Hearne; the Chartularium of Heming, containing some most valuable transcripts from the ancient register of Worcester; the

Hickes, Dissertatio Epistolaris.

Dissertatio Epistolaris of Dr. Hickes, addressed to Sir B. Shower, on the utility of ancient

Madox, Formulare Anglicanum.

northern literature; and the Formulare Anglicanum of Madox, with other works which it would be tedious to enumerate, afford the most authentic materials for illustrating the history of Assurances from the earliest time down to the reign of Henry VIII. From that period—an epoch indeed in legal history, wherein we can detect the dawn of what may be termed the *jus novum* of Conveyancing—we possess various collections of Forms, published from time to time for the professional use of practitioners. This

Spelman.

subject too engaged the particular attention of Sir Henry Spelman. In his posthumous works there is a treatise on ancient deeds and charters, unfinished it is true, but displaying the unequalled accuracy and erudition of that profound antiquary. Something

also may be gleaned from the tracts of Selden, especially his Janus Anglorum, which was rendered into English, with notes, by Dr. Adam Littleton, under the assumed name of Redman Westcot. Though one of Selden's earliest efforts, and much inferior to his subsequent productions, it yet exhibits traces of that accurate research and learning, which, in his riper manhood, rendered him one of the greatest ornaments of our constitutional literature (*a*). Madox, with that unaffected modesty and learned diligence which characterize his valuable writings, has given us the fruit of his researches on this subject in the able Dissertation prefixed to his Formulare. Most readers are acquainted with the popular but superficial work of Dalrymple on Feuds, wherein the author has devoted a chapter exclusively to the history of Forms of Conveyance. Of the works of living writers it is unnecessary to speak: no one, however, can travel along "the ways of hoar antiquity" without being guided and informed by their learned labours. With these and other sources of information, I shall endeavour to lay before the reader a very brief historical account of Forms of Assurances.

Selden. Madox. Dalrymple. Sketch of the history of Forms of Assurances.

III. The Anglo-Saxons, ignorant for the most part of the art of writing, conveyed their landed property from one to another in open folkmoot, by means of visible signs or symbols, which awakened attention, and engraved the transaction in the memory of the

Anglo-Saxons.

(*a*) Selden forms one of the principal figures in that splendid gallery of portraits, with which Clarendon introduces the account of his own Life. i. 35. Oxford edit. 1827.

Witan, called together by the "Mot-bell" to record it (*a*). These symbols do not appear to have been reduced to any such artificial system as obtained in the old Roman (*b*), or even in the Scottish law (*c*); but varied with the fancy of the donor. One delivered a turf, another a staff or spear, and a third an arrow (*d*). Ulfus, son of Toraldus, and a noble of Northumbria, having entered into the minster of York, filled his huge drinking-horn with wine, and there upon his bended knees gave away to God and to St. Peter all his lands and revenues; and quaffing the wine, placed his horn upon the altar in token of the gift (*e*). A curious instance of alienation by symbols is mentioned in the life of St. Birlanda (*f*). The chaste daughter of Oidelardus, repulsing the unnatural addresses of her father, incurred his hatred, and was disinherited by the offended parent, who conveyed all his dominions to St. Gertrude by placing all the symbols of property upon her shrine—a turf, a twig, and a knife. Among the ancient Jews, as appears from the book of Ruth (*g*), when a purchase was effected, the party "plucked off his shoe, and

Symbols of conveyance.

(*a*) Spelman's English Works, p. 233.

(*b*) Savigny, i. 2; Gibbon, v. 362, who pointedly remarks that the "jurisprudence of the first Romans exhibited the scenes of a pantomime."

(*c*) Palgrave's English Commonwealth, P. 2, 227.

(*d*) Reliq. Spelm. p. 8. Selden's Jan. Angl. p. 54. Madox, Form. Diss. p. 1.

(*e*) Selden's Jan. Angl. p. 54. The horn of Ulfus is still preserved in the minster, and part of the "Terra Ulfi" is now in the possession of the chapter of the cathedral. Palgrave's Hist. of England, i. 151.

(*f*) Palgrave's English Commonwealth, P. 2, 227, citing Acta Sanctorum, i. 379.

(*g*) Chap. iv. ver. 7.

gave it to his neighbour; and this was a testimony in Israel," signifying, perhaps, that the purchaser had a full right to *walk over* the land, and otherwise enjoy it as his own. Sir Francis Palgrave supposes that, before the introduction of written instruments, land was *granted* by a form similar to that by which it was *demanded* or defended; and that even after written instruments were employed, the ancient traditional form, couched in a sort of alliterative rhythm, was recited by the party when he delivered possession of the land (*a*).

Introduction of written Forms of Conveyance.

IV. To determine with historical precision at what period the Anglo-Saxons began to employ written Forms of Conveyance, has baffled, and is still likely to baffle, the researches of antiquaries, however devoted to what Prynne calls "the heroic study of records." According to an ancient manuscript quoted by Spelman, the first written conveyance, or ȝpitᵉ, was made by Withredus, King of Kent, in 694; and, as declared by the charter itself, was appointed to be

Charter of Withredus in 694.

(*a*) Palgrave, P. 2, 135, note, Goguet, tom. i, liv. 1. p. 59, and others, indeed, conjecture that originally all laws were composed in verse, and sung. It is certain that ancient Indian grants were in verse; but judging from the specimen preserved by Sir William Jones, i. 529, which is as voluminous as any modern settlement, this style of composition must have been extremely inconvenient in practice. It was attended, too, with various religious ceremonies, from whence we may infer that conveyancing was in the hands of the Pundits. The inflated diction of this singular Indian grant curiously contrasts with the business-like style of the ancient enchorial conveyances, given by the late Dr. Thomas Young in his "Account of Discoveries in Hieroglyphical Literature," pp. 65—85.

kept at Canterbury as a precedent for posterity to imitate (*a*). Selden, however, cites a charter of Cedwalla, King of the South Saxons, made to Theodore, Archbishop of Canterbury, in 687 (*b*). And one of still earlier date, the charter of Ethelbert in 605, is upon record (*c*). At whatever period, however, the introduction of written conveyances took place, it did not immediately occasion the disuse of symbols, which continued long after the Conquest (*d*), and partially indeed even to the present day. The charter of Cedwalla, before alluded to, concludes in these remarkable words:—"For a further confirmation of my grant, I Cedwalla have laid a turf of the land aforesaid upon the Holy Altar; and with my own hand, being ignorant of letters, have set down and impressed the mark or sign of the cross." Sometimes the charter itself was enclosed in the shrine of the saint to whose monastery the land was given (*e*).

Charter of Cedwalla in 687, and of Ethelbert in 605.

Bocland.

Land-boc.

V. When land was conveyed by a written instrument it was called "bocland (*f*)," and the instrument itself a "land-boc," corresponding to the "libellus de terra" of the continental practitioners, and the "possession-boke" of the ancient Jews (*g*). The primitive

(*a*) Reliq. Spelm. p. 8.

(*b*) Selden's Jan. Angl. p. 44.

(*c*) Palgrave, P. 2, 218, from Somner's Canterbury, p. 47.

(*d*) Ellis's Introd. to Dom. B. i. 338, published under the direction of the Record Commission. Madox, Form. Diss. p. 1.

(*e*) Selden's Jan. Angl. p. 44; Ellis's Introd. to Dom. B. i. 339.

(*f*) Spelman's Glos., Bocland. Allen's Inquiry into the Rise and Growth of the Royal Prerogative affords the most complete account of the Anglo-Saxon tenure of landed property, pp. 131—164.

(*g*) Spelman's English Works, p. 233; Jer. xxii. 12.

signification of the Saxon boc is birch; the bark of which tree, being, in ancient times, commonly used as a material for writing, gave its name to a book in our language; in like manner as the inner bark of the linden or teil tree was called by the Romans *liber*, and by the Greeks βιβλος, and in both languages signified a book (*a*). The Anglo-Saxon land-bocs, at least when they concerned the temporalities of the church, were usually transcribed by the clerks of the Scriptorium into chartularies or leiger books, and often translated into the Latin tongue (*b*). Sometimes the description of the land is in Saxon, and the rest in Latin (*c*). To the diligence of these monastic scribes, or chancellors as they were often called (*d*), we are indebted for nearly all our knowledge of our ancient laws; and Mr. Hallam, though he condemns the clergy, sternly and severely, for counteracting the progress of improvement, yet confesses that but for them the very records of philological literature would have perished (*e*).

Primitive meaning of "boc."

Chartularies.

VI. The Anglo-Saxon conveyances were not made according to any prescribed form, but in almost every

Form of Anglo-Saxon land-bocs.

(*a*) Taylor's History of Ancient Books, p. 46. Cowley, in his learned notes upon the first book of Davideis, has collected much interesting information on this subject.

(*b*) Reliq. Spelm. p. 9; Spelman's English Works, p. 234.

(*c*) Textus Roffensis, p. 93, et alibi, Hearne's edit.; Madox, Form. p. 175. Park has printed the charter of Edgar, here referred to, in his Topography of Hampstead, App. No. 1.

(*d*) According to an old verse, quoted by Spelman, cancellare was used for scribere. English Works, p. 235.

(*e*) Hallam's Literature of Europe, i. 6.

instance varied in some particulars (*a*). They are short and simple; "as short and as simple," says Turner, "as they might always be made, if the ingenuity of mankind were less directed to evade their legal contracts by critical discussions of their construction (*b*)." Sometimes they were expressed in the style of an address to the grantee, as in the grant of a kinsman of the King of Essex, made about 961:— "I Hodilredus, the kinsman of Sebbi, in the province of the East Saxons, with his consent, of my own will, in sound mind, and by just advice, for ever deliver to thee, and from my right transcribe into thine, the land, &c., with all things belonging to it, with the fields, wood, meadows, and marsh, that as well thou as thy posterity may hold, possess, and have free power to do with the land whatsoever thou wilt (*c*)." When made by a king, the land-boc was often in the decretal form, as in the following, dated in 704:—"We have decreed to give in dominio to Waldhare, bishop, part of a field, &c. The possession of this land so as aforesaid, with the fields to be sowed, pastures, meadows, marshes, fisheries, rivers, closes, and appurtenances, we deliver to be possessed in dominio by the above bishop in perpetual right, and that he have the free power of doing whatsoever he will (*d*)."

(*a*) Spelman's English Works, p. 324; Turner's Anglo-Saxons, ii. 557.

(*b*) Turner's Anglo-Saxons, ii. 568.

(*c*) Ibid. ii. 556, from Cott. MS. Augustus ii. 26, printed in Smith's Appendix to Bede, p. 748.

(*d*) Ibid. ii. 749; Heming. Chart. p. 15. On the subject of Anglo-Saxon wills, see Gale's valuable Inquiry into the Origin of Testamentary Jurisdictions, printed in App. to Fourth Real Prop. Rep.

VII. "The Saxon conveyances," says Turner (*a*), "consisted principally of these things:— Constituents of Anglo-Saxon conveyances.

"1st. The grantor's name and title are stated. In the older charters the description is very simple. It is more full in those of a later period; but the grants of Edgar are generally distinguished from those of other kings by a pompous and inflated commencement.

"2nd. A recital is usually inserted, in many instances preceding the donor's name. Sometimes it states his title, or some circumstances connected with it. Sometimes the recital is on the brevity and uncertainty of life, and on the utility of committing deeds to writing —sometimes of the charitable or friendly feelings which occasioned the grant; and one recital states that the former land-boc, or conveyance, had been destroyed by fire, and that the donor had applied for new ones.

"3rd. The conveying words follow, which are usually 'Do et concedo; donare decrevimus; concedimus et donamus; dabo; trado:' or other terms of equivalent import, either of Latin or Saxon.

"4th. The person's name then occurs to whom the land is granted. The name is sometimes given without any addition, and sometimes the quality or parentage is simply mentioned.

"5th. What lawyers call the consideration of a deed is commonly inserted. This is sometimes 'Pro intimo caritatis affectu,' 'Pro ejus humili obedientia,' and such like. Often it is for money paid, or a valuable consideration."

(*a*) Hist. Anglo-Saxons, ii. 568.

"6th. The premises are then mentioned. They are described shortly in the body of the grant by their measured or estimated quantity of land, and the name of the place where they were situate. Some general words then follow, often very like those annexed to the description of premises in our modern conveyances.

"7th. The nature of the tenure is then subjoined, whether for life or lives, or in perpetuity, or whether any reversion is to ensue.

"8th. The services from which the land is liberated, and those to which it is to continue subject, are then expressed.

"9th. Some exhortations are then inserted to others, not to disturb the donation, and some imprecations on those who attempt such disturbance.

"10th. The date, the place of signature if a royal grant, and the witnesses, usually conclude it. The date is sometimes in the beginning (*a*)."

Use of crosses among the Anglo-Saxons instead of seals.

VIII. Although seals were in use among the Anglo-Saxons, probably for impressing the wax which closed their epistles (*b*), yet they did not employ them for authenticating their charters, but used only the sign of the cross; which was accounted the most solemn mode of confirmation, and a sure amulet against wrong-doers, according to the old verse, "Per Crucis hoc signum, fugit hinc procul omne malignum (*c*)." Thus Edgar concludes his charter to

(*a*) Turner's Anglo-Saxons, ii. 570.

(*b*) Palgrave, P. 2, 215.

(*c*) Spelman's English Works, p. 235.

Crowland Abbey, dated 966:—"I Edgar, monarch of all Albion, have confirmed this deed with the sign of the Holy Cross, + ." Dunstan does the like:—"I Dunstan, Archbishop of Canterbury, have fortified this deed with the sign of the Holy Cross, which we set up in triumph over our enemies + ." Then the rest of the bishops and nobles subscribe in like manner with crosses. Again, in King Edgar's char ter of the sanctuary at Westminster, dated 968:—"I Dunstan, though a sinner, yet Archbishop of Canterbury, have sealed this liberty or privilege with the joyful sign of the cross + (*a*)." Some Saxon kings, however, as Edward the Confessor, and perhaps Edgar, used both seals and crosses; but the usage did not possess the uniformity and constancy of a legal custom (*b*).

Anglo-Norman.

IX. Important as were the ultimate consequences of the Norman conquest both to our laws and literature, yet the alterations produced in the forms of conveyancing did not immediately follow that event, but rather resulted from those progressive changes which terminated in a general fusion of laws. Hume, Blackstone, and most other modern writers (*c*), have given currency to the opinion, that an immediate change ensued in the language of our laws,

Language of Anglo-Norman laws, charters, and acts of state.

(*a*) Spelman, p. 235.

(*b*) Ibid. p. 236; Palgrave, P. 2, 216; and see Ellis's Introd. to Dom. B. i. 40, note.

(*c*) Hume, i. 230; Bla. Com. iii. 317, iv. 415; Turner's Middle Ages, v. 422; Quarterly Review, x. 272, art. xii. by the late Dr. Thomas Young. This valuable article is incorporated into the new edition of the Encyclopædia Britannica, art. Language, vol. xiii.

charters, and acts of state; and that, conformably to the ordinance of the Crown, they were henceforward expressed in the French tongue. Daines Barrington, in his observations on the statute De Scaccario, 51 Hen. III., first pointed out the groundlessness of this opinion; and Luders, in his masterly tract "On the Use of the French Language in our Ancient Laws and Acts of State," has supported the same view with great learning and research. This last able writer doubts whether any such ordinance as is ascribed to the Conqueror was ever given (*a*): it rests on the authority of a doubtful reading of a passage in the history of Ingulfus—a work whose authenticity was questioned by Dr. Hickes (*b*), and which a distinguished living critic conceives to be a forgery of Richard II.'s time (*c*). Certain it is, however, that although the French language was spoken by the superior classes of society from the Conquest to the reign of Edward III. (*d*), yet, until the time of King John, all records, acts of state, laws, writs, and charters both of sovereigns and subjects, (with one doubtful exception) (*e*), are either in Latin or Saxon (*f*). I need hardly remark that Domesday

Domesday Book.

(*a*) Luders's Tracts, vi.

(*b*) Præf. ad Thesaurus, p. 29.

(*c*) Hallam's Literature of Europe, i. 37.

(*d*) Ibid. i. 63; Turner's Middle Ages, v. 441. Henry's Hist. viii. 391.

(*e*) I allude to the laws of William the Conqueror, in the history of England ascribed to Ingulfus. They are in French, but evidently a mere repetition of the laws of Edward the Confessor. Both Ritson, (Dissertation on Romance, p. 66), and Luders, (p. 377), suppose them to have been originally written in Saxon, and afterwards translated into French.

(*f*) Luders's Tracts, p. 342; Barrington's Observations on Ancient Statutes, p. 54. As to the

Book, the most important publication of William's reign, and which was completed in 1086, is in the former language (*a*). Latin, indeed, was employed by the Normans for these purposes in their own country; and it would have been strange, as Mr. Luders remarks, if, in England, they had adopted a language neither conformable to their own native usage, nor that of the people whom they had subdued (*b*). Soon after 1270, French, however, was brought into common use; it was employed in private letters, and in grammar schools boys construed their Latin lessons into that tongue (*c*). During the reigns of Edward III., Richard II., Henry IV., and Henry V., and perhaps much earlier, conveyances were usually in the French language (*d*). In the reign of Henry VI. they were often in English, but more commonly

language of acts of parliament, a full and accurate account is given in the Introduction to the Statutes at large, edited under the Record Commission, chap. iv. sect. 2. Of law proceedings, see Luders, passim, and Mr. Amos's notes to Fortescue, p. 179, and Blackstone and Reeve.

(*a*) Sir Henry Ellis, in his useful Introd. to Dom. B. i. 12, takes occasion to remark that the Dom-boc of Alfred, which is not extant, was in reality a code of laws, and not a survey of the King's dominions, as is commonly supposed. Sir Martin Wright, however, has quoted a passage in his Tenures, p. 57, note, from Ingulfus, who had seen the Dom-boc, which cannot be reconciled with Ellis's opinion.

(*b*) Luders's Tracts, p. 349.

(*c*) Hallam's Literature of Europe, i. 63.

(*d*) I have counted in Madox's Formulare one French instrument of the reign of Edward II., eight of Edward III., ten of Richard II., seven of Henry IV., and three of Henry V. Sir John Cavendish, who was Chief Justice in Richard II.'s reign, begins his will in Latin, but the rest is in French, "quia lingua Gallica *amicis meis et mihi* plus est cognata et majis communis et nota quam lingua Latina," &c.—Ruggle's Memoir of the Cavendish family, in the Archæologia, xi. 55.

in Latin (*a*). Both these languages continued to be used indiscriminately until the reign of James I., when the Latin was almost wholly superseded by the English (*b*).

Charters in the reign of Henry III.

X. About the reign of Henry III. or Edward I. the Forms of Conveyancing began to assume a very methodical composition (*c*), which has in great measure continued to the present day. A charter was often called "chirographum," originally, perhaps, from the meaning of the word—hand-writing, and afterwards from the usage (which obtained also among the Anglo-Saxons) (*d*) of writing it in capitals either at the top or bottom of the deed, of which there were often two copies on the same piece of parchment. Duplicates, however, were made only when there were two or more parties interested in the deed; so that when the parchment, with the word "chirogra-

Chirographum.

(*a*) Madox's Form. contains five English instruments of the reign of Henry VI., six of Edward IV., one of Richard III., nine of Henry VII., and eight of Henry VIII. I may add, that the Proceedings and Ordinances of Privy Council, edited by Sir Harris Nicolas, under the direction of the Record Commission, begin with the 10 Richard II., and from that time until the 15 Henry VI. are chiefly in French. Afterwards the English appears to have been commonly used. See also Calendars of Proceedings in Chancery, vol. i. preface, where it is said, that in the reign of Henry VI. the English language, which had been partially introduced in the time of his predecessor, was generally adopted.

(*b*) The Boke of Instruments, published in 1543, contains more Latin forms than English; but in West's Symbolæography, which appeared in 1594, there are more English than Latin.

(*c*) Spelman's English Works, p. 236; Madox, Form. Diss. p. 5.

(*d*) Madox, Form. pp. 176, 238, 421.

phum" written across it, was cut through and divided with a knife, each party was enabled, on any future occasion, by merely comparing the two parts together, at once to identify the instrument he had executed. Other words were often used instead of chirographum, such as "Indentura," "Ave Maria," or the first five or six letters of the alphabet (*a*). When cut through or indented, either in acute angles, instar dentium, as formerly, or in modum undularum, as at present, the deed is called an indenture; but when shaven evenly or polled, a deed-poll (*b*). Indenting of charters.

XI. From the time of the Conquest, the ancient custom of subsigning charters with crosses—a mode still practised by the illiterate—gradually gave way to the Norman usage of affixing to them seals of wax. Both seals and crosses were occasionally used (*c*); but until the reign of Henry II. the privilege of using a seal hardly extended to any but princes and the greater barons (*d*). Seals were of various forms—round, oblong, or oval; and of various colours—red, green, or yellow. They were either fixed to a cautel of parchment cut from or appended to the Use of seals.

(*a*) Madox, Form. pp. 169, 269, et alibi.

(*b*) Madox, Form. Diss. p. 28; Bla. Com. ii. 295.

(*c*) Madox, p. 27; Palgrave, P. 2, 216. In the British Museum there is a collection of casts, nearly complete, from the Great Seals of England from the Conquest to the present time. The double portraiture was borrowed from the Conqueror's Great Seal, which, on one side, exhibits his effigy as the Duke of Normandy, and on the other, as King of England.

(*d*) Palgrave, P. 2, 70, 216. Spelman's English Works, p. 254.

bottom of the charter, or fastened by silken or flaxen strings braided or wreathed together (*a*). Even the witnesses sometimes affixed their seals (*b*). Sealing is still essential to the validity of a deed; and Blackstone (*c*), who is blindly followed by others, supposes that since the 29 Car. II. c. 3, signing is also requisite. That statute, however, though worded loosely, hardly warrants such a construction (*d*).

Attestation of charters.

XII. There is another important ceremony used in executing charters, which is worth noticing—the Attestation. In ancient times the witnesses were exceedingly numerous, and until the reign of Henry VIII. (*e*), their names were commonly inserted in the charter itself—not by the witnesses themselves, many of whom were unable to write, but by the clerk in their presence. The clause in which this was done has been called the "Hijs Testibus." It is found in the charters both of private men and of kings. About the time of Richard I. another kind of *teste*, said to be peculiar to the kings of England, was introduced—the "Teste meipso." It was at first used in writs or mandatory precepts, but afterwards in royal charters; and the same form was sometimes employed by the King's Chief Justiciar (*f*). Madox has endeavoured, with patriotic earnestness, to vindicate this usage against the ridicule cast upon it by

Hijs Testibus.

Teste meipso.

(*a*) Madox, Form. pp. 40, 42, et alibi.

(*b*) Madox, Form. Diss. p. 28.

(*c*) Vol. ii. 306.

(*d*) See the first volume of this work, Book ii. chap. viii.

(*e*) Spelman's English Works, p. 256.

(*f*) Madox, Form. Diss. p. 32.

Pope Pius; but what can reconcile us to the absurdity of one being a witness to himself?

Carta Feoffamenti.

Livery of seisin by symbols.

XIII. Of the principal sorts of charters in ancient times, the "Carta Feoffamenti" was the one most commonly used. Livery of seisin, called by the feudists investiture, was so essential to the operation of a feoffment, that without it no estate could pass. There were various ways of giving seisin. In 1096 King William II. gave the Abbot of Tavistock seisin of the manor of Wlurinton, per cultellum eburneum; whereupon the knife, which had words of donation engraved on its haft, was laid up in a shrine of the abbey. Madox, who cites this instance, has enumerated various other symbols (*a*); but he omits to mention that they were sometimes very richly orna mented. One entailed by Lord Ormond, in 1515, is thus described by him in his will:—"The lytle whyte horne of ivory, garnished at both thendes with gold, and corse thereunto of whyte sylke, barred with barres of gold, and a tyret of gold thereupon, which was myn ancestours at fyrst time they were called to honour, and hath sythen contynually remained in the same blode (*b*)."

Lord Ormond's symbol.

Act of enfeoffing, how performed.

XIV. The act of enfeoffing was often performed in the hundred or county court, (as in the Anglo-

(*a*) Madox, Form. Diss. pp. 9, 10.

(*b*) Archæologia, iii. 20. Mr. Astle conjectures that this symbol came into the family either on Henry II.'s appointing Theobald, the first of his family, butler of Ireland, 1177, or on the creation of the first Earl of Ormond by Edward I., when the county of Tipperary was made palatine.

Saxon times), in the presence of a number of witnesses, who attested the transaction (*a*). In the absence of the feoffor, seisin was sometimes given by one deputed by him for that purpose. The King issued his writ, (precept or letters), to command the sheriff, provost, or other officer to deliver seisin; a subject made a letter of attorney, either by a distinct instrument, or in the charter of feoffment (*b*).

Operative words.

Ancient charters of feoffment usually contain the operative words "dedisse, concessisse, et confirmasse," or "donasse," and the term "feoffavi" is sometimes met with. They were commonly made pro homagio et servitio of the feoffee, to hold of the feoffor and his heirs;

Quia emptores terrarum, 18Edw. 1, c. 1.

but, after the statute Quia emptores terrarum, these words were omitted; and feoffments were then made ad tenendum de capitalibus dominis feodi. This, it may be observed, put an end to the creation of those petty manors with which provincial pride sought to

Warranty.

elevate itself into importance (*c*). A clause of general warranty was usually inserted, to which was often added the oath of the party. Coke enumerates eight formal parts of a feoffment, but the fifth, sixth, and seventh are not found in ancient charters (*d*).

Fines.

XV. A still more solemn mode of conveyance was by Fine. Antiquaries have not determined at what

(*a*) Madox, Form. Diss. p. 24.

(*b*) Ibid. pp. 10, 11.

(*c*) "This statute stopt the course of creating new manors, which in former times was so ordinary in our county of Norfolk, as no man almost that had an hundred acres of free land, but would grant a portion of it amongst his followers for service, rent, and suit of court; and by this means usurped by little and little the manner and fashion of a manor." Spelman's English Works, p. 250.

(*d*) Madox, Form. Diss. p. 5.

period this species of assurance, which resembles the *transactio* of the Roman law (*a*), was first introduced into this country. Catlyn, who was Chief Justice in Elizabeth's time, asserts the existence of Fines among the Anglo-Saxons; and Blackstone seems to have acquiesced in this opinion (*b*). Cruise, indeed, says that Fines could not possibly have been known in England until 1130, when a copy of the Pandects was found at Amalfi; which discovery, he supposes, first revived the study of the Roman law. But this popular story, which ought not to have been passed over without gloss or comment by the editor of Mr. Cruise's work, has been discredited by Savigny; and the inference drawn from it is certainly unwarranted; for, as that eminent jurist has shown, the Pandects were known in different parts of Europe long before the capture of Amalfi (*c*). Sir Francis Palgrave suggests that Sir Robert Catlyn's opinion was probably founded on the circumstance, that among the Anglo-Saxons hostile suits concerning land were often concluded by an amicable agreement before the witan, and commemorated in a charter, which thus became one of the evidences of title (*d*). Whatever view, however, may be taken of this question, all writers agree that no records of Fines have

Origin of.

(*a*) Cowell's Interpreter, verb. Fine; Co. Litt. 262 a.

(*b*) Bla. Com. ii. 349.

(*c*) Savigny, i. 442. And see Hallam's Literature of Europe, i. 81; Middle Ages, iii. 514. St. Aldelmus bears testimony to the study of the Roman law in England in the seventh century; and Alcuin, in 804, when describing the school at York, speaks of jurisprudence as included within the course of study.

(*d*) Palgrave, P. 1, 144.

been discovered earlier than the 28 Henry II. (*a*). Glanville, indeed, speaks of Fines being "well known" in his time; and he is supposed to have written in Henry II.'s reign. Grave doubts, however, have been raised as to the genuineness of the work ascribed to Ranulph de Glanville, Chief Justiciar to Henry II.; partly on the ground of its being written in Latin not very impure, in an age when that accomplishment was unlikely to be possessed by a layman (*b*); and partly on internal evidence, which cannot be easily reconciled with the circumstances of Glanville's life (*c*). While one writer seems disposed to assign the authorship to a justice itinerant of the same name (*d*), another inclines to give it to a William Glanville, who sat in the Curia Regis in the 7 & 8 Richard I. (*e*). Lord Lyttelton supposes that the treatise was written by some ecclesiastic, under Glanville's direction (*f*).

Ancient mode of conducting Fines.

XVI. According to Madox, the ancient mode of conducting a fine was this:—The parties, having come to an amicable agreement concerning the matters in dispute, and mutually sealed a chirographum expressing it, appeared in the King's court, either personally or by deputy, and there recognised the concord or agreement in the presence of the justices;

(*a*) Hunter's Pedes Finium, Pref., edited under the Record Commission.

(*b*) Lyttelton's Hist. of Henry II., ii. 287. Beames, in the Preface, xiv., to his translation of Glanville, disputes the justness of this opinion.

(*c*) Hunter's Pref. to Pedes Finium.

(*d*) Reeve's History, i. 223.

(*e*) Hunter, ubi supra.

(*f*) Hist. of Hen. II., ii. 267.

which concord, upon payment of a fine to the Crown, was enrolled in the Court. Sometimes the parties came to an agreement in Court, and had the concord at once drawn up, and there recorded; in which case each party received a counterpart (*a*). In course of time, Fines came to be usually passed without a chirographum intersealed, upon a placitum commenced by the King's writ, as by writ of covenant, assize of mort d'auncestor, &c. Some remnant, however, of the ancient practice continued; for until the abolition of Fines in the present reign, pedes finium, or chirographs, as they were called, were prepared by an officer styled the chirographer (*b*).

Recoveries.

XVII. Another mode of conveyance was by Recovery. This species of assurance (which, as well as the one just described, has been recently abolished) was contrived by the religious houses, for enabling them to evade the statute De religiosis, 7 Edward I., which inhibited them from taking any gift or conveyance of lands in mortmain. Setting up a fictitious title to the land intended to be gained, they brought an action to recover it against the tenant, who collusively abstained from making any defence; whereupon judgment was given for the religious, who thus *recovered* the land (*c*). This ingenious mode of evading the statute of Edward I. was checked by another of the same reign. Ecclesiastical ingenuity, not yet exhausted, soon devised, however, another method, afterwards restrained by the statute 15 Richard II. c. 5, by which

Origin of.

(*a*) Madox, Form. Diss. p. 14. 351.
(*b*) Ibid. p. 17; Bla. Com. ii. (*c*) Bla. Com. ii. 271.

Feoffment to uses.

lands were granted to a person, capable of purchasing, *to the use* of the religious house: "thus distinguishing," says Blackstone, "between the *possession* and the *use*, and receiving the actual profits, while the seisin of the lands remained in the nominal feoffee; who was held by the courts of equity (then under the direction of the clergy) to be bound in conscience to account to his cestui que use for the rents and emoluments of the estate." It is to this invention that we are indebted for the introduction of uses and trusts; the foundation, as Blackstone remarks, of modern conveyancing.

Origin of Bargains and Sales, and Covenants to stand seised.

XVIII. The equitable doctrine of uses gave rise, indeed, to two new species of conveyance, wholly unknown to the common law. When one *bargained and sold* an estate to another, or *covenanted to stand seised* of an estate to the use of one of his near kindred, equity converted the bargainor or covenantor into a trustee for the bargainee or covenantee; and bound him to account for the profits of the estate. Now, when the statute 27 Henry VIII. conjoined the possession to the use, "bargains and sales" and "covenants to stand seised," which before were only equitable assurances, became, in fact, legal conveyances. To prevent, however, clandestine assurances of freeholds by means of bargain and sale, it was enacted in the same session, by statute 27 Henry VIII. c. 16, that such instruments should not operate to pass a *freehold* estate, unless made in writing, indented, and enrolled. No provision, however, was made for bargains and sales *for years;* and this omission gave rise to the

modern assurance by Lease and Release. Though somewhat complex, the modus operandi of this conveyance may be easily explained. A bargain and sale being made for a year, the bargainor becomes seised to the use of the bargainee. To this use, the statute conjoins the possession. And as the bargainee thus acquires an actual vested estate, he is enabled to receive a *release* of the reversion, which enlarges his particular estate into a fee. This conveyance, it is said, was first contrived by Mr. Serjeant Moore; but the merit, if any, of the invention belongs to others; for before the Statute of Uses land was conveyed by lease and release, differing from the modern mode only in this, that instead of a bargain and sale, which needs no actual entry, a common-law lease was made, which required possession to be taken before the lessee was capable of receiving a release of the reversion. When the reversion was conveyed, not to the tenant in possession, but to a stranger, the proper mode of assurance was a "Grant," to which the tenant's attornment, until rendered unnecessary by a modern statute, was essential.

Lease and Release.

Modus operandi.

Grants.

XIX. Passing over Exchanges, Partitions, Confirmations, and Surrenders, as calling for no particular observations in such an historical sketch as the present, I shall advert only to the conveyance by Will. In the Anglo-Saxon times lands were devisable, but upon the establishment of the feudal polity in this country, that privilege was abolished; and until the 32 Henry VIII., with some local exceptions, no one could alien an estate by will. An indirect mode indeed was adopted,

Wills.

through the medium of the doctrine of uses; feoffments being often made to friends, in trust to dispose of the estate after the feoffor's death according to his direction; and the Court of Chancery compelled the feoffees in trust to perform them. By the Statute of Uses, however, this practice was clearly done away; whereupon the 32 Henry VIII., commonly called the Statute of Wills, gave to an owner in fee, under certain restrictions, a power of devising his estate (*a*) — a power that, as already explained in the first volume (*b*), has in modern times been subjected by the legislature to various regulations, which in this place it is unnecessary to repeat.

Collections of Forms of Assurances.

The Chartuary in 1534.

Dr. Phayer's Boke of Instruments, in 1543.

XX. Of the various collections of Forms of Assurances that have been published for the use of practitioners, the earliest I know of is The Chartuary, printed in the Boke of Justices in 1534, and published also under the title Carta feodi simplicis cum litera attornatoria &c. This was followed by a much more complete work, the Boke of Instruments, which appeared in 1543; and in about forty years passed through not less than nine editions. The Forms are arranged topically, under the heads of advowsons, presentations, letters missive, patents of gifts, letters of significavit, leases, releases, deeds of sale, obligations, acquittances, letters of attorney, letters patent, bills of complaint, answers, and other petitions, and letters testimonial. The second edition, published in 1546, contains various

(*a*) Bacon, xiii. 240; Blackstone, ii. 375.
(*b*) Book iii. chap. vii.

additional instruments, some of them of a very singular character, and curiously illustrative of the manners of the times. This work is ascribed by Anthony Wood (*a*) to Dr. Thomas Phayer, who was born in Wales, educated at Oxford, and studied the law, it is supposed, in Lincoln's Inn. He was appointed crown solicitor for the marches of Wales; but being, says Wood, of a mutable mind, he addicted himself to the study of medicine, and took his doctor's degree in that faculty. Besides various medical works, little known in the present day, he published a translation of the first nine books of the Æneid, which seems to have been much esteemed by some of his friendly contemporaries. Judging, however, from the extracts given by Dr. Bliss, it is but a rude performance; and the ruggedness of the verse is not redeemed by any force or vigour of expression. Phayer's only legal publication, besides the Boke of Instruments, is on the Nature of Writs.

Tenores and Formes of Indentures, in 1555.

XXI. In 1555 there appeared a collection of precedents, under the title of Tenores and Formes of Indentures, Obligations, &c. It is, however, much inferior to the work just mentioned. This was followed by the Symbolæography of William West, in 1594, which soon acquired considerable reputation, and has always been esteemed a book of authority (*b*). The author, indeed, informs us that nothing of the same kind has ever been reckoned more acceptable or more worthy of approbation. West was a pedant, even in that pedantic age; and scrupled not to set

West's Symbolæography, in 1594.

(*a*) Athenæ Oxon. i. 317, Bliss's edit. (*b*) 2 Taunt. 85.

forth his learning under the guise of Greek and Hebrew. In deference, however, to his unlearned readers, he dropped this idle display of scholarship in a second edition; therein consulting, as he tells us in a prolix dedication, expressed in not very good Latin, their profit rather than his own fame. According to West, Symbolæography is the "art or cunning rightly to form and make written instruments;" and is either judicial or extra-judicial; the latter being wholly occupied with such instruments as concern matter not yet judicially in controversy, viz. instruments of agreements or contracts, and of testaments or last wills. Judging from the doctrinal part of this work, the author's attainments were more specious than solid. His dissertation on Contracts, put forth as original, was epitomised and translated from Hermannus Vultejus (*a*). As a collection of Forms, however, the Symbolæography has been deservedly esteemed: it is very comprehensive, containing a great variety not only of precedents in conveyancing, but of indictments, and of proceedings in Chancery. In the second edition some mercantile forms were added.

Perfect Conveyancer, in 1650.

XXII. More than fifty years elapsed before the publication of another work of this kind; at least I know of none earlier than the Perfect Conveyancer, in 1650, containing select precedents by Edward Hendon, William Noy, R. Mason, and H. Fleetwood.

Fidell's Perfect Guide, in 1654.

Fidell's Perfect Guide for a Studious Young Lawyer was published in 1654; and in the following year

Sheppard's President of Presidents, in 1655.

appeared Sheppard's President of Presidents, the

(*a*) Wood's Inst. Civil Law, Preface ix.

Compleat Clerk, or Conveyancer's Light, and the Clerk's Vade Mecum. Sheppard's book has been frequently reprinted. It is chiefly valuable in the present day for the concise summary of the law of assurances, extracted from the Touchstone and Abridgment ascribed to the same author. Whether these works, which are of great merit, are in fact the production of Sheppard, has been doubted by very competent judges, who give the authorship to Mr. Justice Dodderidge. The Compleat Clerk, which is much more extensive than the Clerk's Vade Mecum, contains a great variety of instruments of all sorts, alphabetically arranged. The title Settlements is particularly complete; "being fully fraught with all manner of limitations of uses, conditions, powers, provisoes, and other extraordinary clauses used in great settlements; forming, indeed, the most considerable and weighty matters in the book." With the exception of the Exact Clerk, in 1656, Herne's Modern Assurancer, in 1658, Manley's Clerk's Guide, in 1672, and Billinghurst's Arcana Clericalia, in 1674, we meet with no collection of conveyances until the time of Sir Orlando Bridgman.

Compleat Clerk, in 1655.

Clerk's Vade Mecum, 1655.

Exact Clerk, in 1656.

Herne's Modern Assurancer, in 1658.

Manley's Clerks' Guide, in 1672.

Billinghurst's Arcana Clericalia, in 1674.

XXIII. No one holds a more conspicuous station in the annals of conveyancing than Sir Orlando Bridgman, emphatically styled by Mr. Serjeant Hill the Father of Conveyancers (*a*). Adhering to the cause of Charles I., he was involved in the disasters of those troublous times; and, during the Common-

Sir Orlando Bridgman.

(*a*) Dougl. 568.

wealth, betook himself to a sedentary way of life, and practised as a conveyancer. "He became the great oracle, not only of his fellow sufferers, but of the whole nation, in matters of law; his very enemies not thinking their estates secure without his advice (*a*)."

His Select Precedents, published in 1682.

His Select Precedents of deeds and instruments concerning the most considerable estates in England, drawn and approved by him during that period, were published in a folio volume in 1682. After the Restoration, Sir Orlando was raised to the place of Lord Chief Justice of the Common Pleas, where he distinguished himself as a judge of profound learning and extensive industry. Such at least is the testimony of Lord Ellenborough (*b*). His judgments in the Common Pleas, from Michaelmas term 1660, to Trinity 1667, edited from the Hargrave MSS. by Mr. Bannister, were published in 1823. Upon the removal of Lord Clarendon, the seals were given to Sir O. Bridgman; but, according to Burnet (*c*), his

(*a*) Johnson's Pref. to Bridgman's Conveyances. The following Lines from Parnassi Puerperium, published in 1659, are cited in Park's Contre-Projet, p. 29, to shew that the practice of submitting titles to *counsel* was almost universal at that period:—

"*To those excellent Conveyancers, Sir Orlando Bridgman, and the worthy Mr. Geoffry Palmer.*

"Wise Greece and Rome did this in both combine,
To make addresses to the Delphian shrine;
And with divine Apollo to advise,
Was the preludium of an enterprise.
Few Englishmen dare purchase an estate
Unless your wisdoms unsophisticate
The title vouch. Ye can stop Hymen's way:
For portions, jointures, both sexes must pay
Due thanks. Wise fathers ranters keep in awe,
Craving from ye (the oracles of law)
Help to entail their lands; whilst yourselves be
Tenants of riches, of renown, in fee."

(*b*) 14 East, 134.

(*c*) Hist. of His Own Times, i. 464. See Life of Clarendon, i. 214; Hist. of the Rebellion, iii. 448, Oxford editions.

study and practice had lain so entirely in the common law, that he never seemed to apprehend what equity was. He was a man of great integrity, but wanted decision and firmness of mind. "He laboured very much," says Roger North, one of the most interesting and prejudiced writers of that time, "to please every body; and that is a temper of ill consequence in a judge. It was observed of him, that if a cause admitted of divers doubts, which the lawyers call points, he would never give all on one side, but either party should have somewhat to go away with (*a*)." Having lost all credit at Court, chiefly from not being sufficiently compliant, an occasion was soon found, or made, for his dismissal; and having refused, in 1672, to sanction a royal declaration for suspending the execution of some penal laws — an act considered by him to be contrary to law (*b*)—the seals were soon afterwards taken from him, and given to Lord Shaftesbury, who was suspected to have gained the place of his predecessor, by undertaking to do whatever he had refused (*c*).

XXIV. The next collection that appeared was the Scrivener's Guide, in 1695, by Nicholas Covert; and during the six succeeding years we meet with the Ars Clericalis, in 1696, the Modern Conveyancer, in 1697, the Enchiridion Clericale, and the Compleat

Covert's Scrivener's Guide, in 1695.

Ars Clericalis, in 169

Modern Conveyancer, in 1697.

Enchiridion Clericale, in 1701.

(*a*) Lives of the Norths, i. 179, 421, (1826).

(*b*) Burnet's Hist. of His Own Times, i. 563; note from Salmon's Examination, i. 662.

(*c*) Lives of the Norths, i. 181, 421.

Compleat Conveyancer, in 1701.

Conveyancer's Assistant, in 1702.

Conveyancer, both in 1701. This last consists of precedents settled by the eminent conveyancers, Sir J. Maynard, Sir Francis Pemberton, and Sir Ambrose Phillips. In 1702 another collection was published, under the title of the Conveyancer's Assistant, which, besides a variety of Forms, contains some professional opinions of Sir F. Pemberton, Mr. Sergeant Levinz, and other eminent lawyers of that day (*a*).

(*a*) "Whether conveyancing," says the editor, "be an art or a science, according to the school distinction, I shall not determine. I think it may rather be called *Ars Scientifica*, as some please to express themselves: for he that will arrive to any perfection therein, must be well acquainted with the diversities of the limitations of estates in fee tail, for life, &c. as also with the qualities thereof, as joint-tenancy, &c., and the incidents, rents, conditions, and the like; and indeed he ought to be well skilled in the Institute and Reports. And yet, unless he can make a due application of his notions—unless he knows how to frame and fit these materials suitable to his intended design, he will rather be exploded as an immethodical blunderer, than esteemed a neat conveyancer. If a carpenter should make the kitchen where the parlour should stand, or the staircase where the windows should be placed; though it may be called a house, yet few would value it at half the purchase." The editor's observations on the causes of the increased length of modern deeds, are too judicious to be omitted. "It is true," says he, "that conveyances in our times may well be called books; I say, in our times; for in our forefathers' days a manor with the demesne of a thousand pounds per annum might have been transferred by a parchment writing not much bigger than a bond; yet now, twenty or thirty skins of parchment are frequently engrossed towards the conveyance or settlement of an estate of not half the value. Crescit in orbe dolus, is given as a good reason by my Lord Coke; and yet this is not all. The Statute of Uses first occasioned the spinning out of conveyances; and since trading has increased, letting out of money upon mortgage, first of one part of an estate and afterwards of another, hath likewise increased, which, by assignments, and keeping them on foot, to an entire purchaser, for protecting

Of the various works of Giles Jacob, it would be tedious to speak. His Accomplished Conveyancer, published in 1714, and his Grand Precedent, in 1716, though the earliest, are not the least useful of his numerous publications. The next work that we meet with is the Practical Conveyancer of John Lilly, published in 1719. It is divided into two parts: the first contains an account of the theory of conveyancing; the second consists entirely of Forms, "being the first part reduced into practice." With the exception of Bird's Practising Scrivener and Modern Conveyancer, in 1729, and Pigot's Precedents, which will be presently noticed, no considerable collection appeared until the able and elaborate one, published in three large volumes folio, in 1744. This contains the precedents of the celebrated Gilbert Horsman and other eminent counsel of that period. Mill's Select Precedents of Conveyances were published in the following year. A much more valuable collection than either Horsman's or Mill's appeared in 1749, by Edward Wood. This is on the same plan as Lilly's Conveyancer, already mentioned, but more extensive,

Jacob's Accomplished Conveyancer, in 1714, and Grand Precedent, in 1716.

Lilly's Practical Conveyancer, in 1719.

Bird's Practising Scrivener, in 1729.

Horsman's Precedents, in 1744.

Mill's Conveyancing, in 1745.

Wood's Conveyancing, in 1749.

from incumbrances, have swelled into a bushel of sheep-skins. Besides, men who had ample estates descended from their ancestors, were desirous to keep them in the name and blood, and so invented the preservation of contingent uses; and then they considered, that though nature and policy obliged them to leave the fairest and most ancient patrimonial estate to their heir at law, (who might be as a Stadtholder of the family), yet when they saw that younger brothers and sisters were but as servants and mere dependents, they began to invent provisions for younger sons and daughters. Hence came annuities, portionary payments, either by grant, or by raising uses, trusts, powers, and the like."

and far superior in execution to that work. An improved edition (being the fifth) was published by Mr. Powell in 1790. Newman's Compleat Conveyancer, in 1782, is an indifferent compilation, chiefly from Wood and Horsman.

Newman's Complete Conveyancer in 1782.

Pigot.

XXV. Among modern conveyancers, few have attained greater eminence than Nathaniel Pigot, who was justly distinguished, not only as a profound lawyer, but as a draftsman of the most consummate skill. Debarred, by the statute 7 & 8 Will. III., in common with other Roman Catholics, from all forensic practice, he employed himself solely as a conveyancing counsel. In 1739, he published a treatise on Common Recoveries; it confirmed the general opinion of his acquirements, and long continued to be the best text-book on that very difficult and complicated subject. An enlarged edition of this work was given by Mr. Sergeant Wilson, in 1770. Besides the treatise on Recoveries in 1739, Mr. Pigot published, in the same year, an excellent collection of Precedents in Conveyancing, chiefly drawn by himself. Compared with others of that time, Mr. Pigot's Forms are eminently concise (*a*).

Booth.

XXVI. Mr. Pigot was succeeded by James Booth, whom Butler calls the patriarch of the modern school of conveyancing. Persuaded by Mr. Murray, afterwards Lord Mansfield (*b*), one of his earliest and best

(*a*) Butler's Reminiscences, ii. 274.

(*b*) The following letter was addressed by Mr. Murray to Mr. Booth, in 1735: "My dear friend; I received yours last night. I cannot but applaud the protection you give a sister, whom I know you love tenderly; yet it seems a little rash to carry your

friends, to establish himself in the metropolis, he soon acquired considerable practice, and rose to distinguished eminence. Equal to his predecessor in a knowledge of the laws of real property, he perhaps excelled him in his views, which were both clear and extensive, of the actual working of the Statute of Uses —the Magna Charta of conveyancers (*a*). Disdain-

beneficence so far as to dry up the source of all future generosity; and I am sure it is greatly against the interest of every one, who has the least dependence upon you, that you should do any thing which makes it at all difficult for you to persevere in a way you must at last succeed. Of this I have no doubt: and, therefore, it is as superfluous to add my advice for your coming to town immediately, as it would be to tell you that I omit no opportunity of mentioning your name, and promoting your interest. You cannot fail but by staying in the country, and suffering people who have not half your merit to step in before you. With regard to every thing you say of Mr. Pigot, we will talk more at large hereafter: I as little think he will bring you into his business while he lives, as that you can be kept out of a great part of it when he dies. I am at present consulted upon a devise settlement of his, whereby a great estate is left to a noble Roman Catholic family, which I am very clear is good for nothing. Can you contrive a way by which an estate can be left to a papist? Though I have no more doubt of the case put to me, than whether the sun shines at noon, I told the gentleman who consulted me I would willingly stay to talk with a Roman Catholic conveyancer, &c., whom I expected soon in town, and named you to him.

"I own I am desirous you should come to town; and be assured the best service you can do your friends is, to put yourself in a way to serve them effectually. As to any present occasions you have, you know where to command while I have a shilling.

"I am, I do assure you, with great cordiality and esteem,

"Dear Booth,

"Your affectionate friend,
and faithful servant,
"W. MURRAY."

(*a*) Butler's Reminiscences, ii. 274; Historical Memoirs of the English Catholics, ii. 337.

ing or incapable of the precision of Pigot, he introduced a prolixity into conveyancing, which long continued to infect our legal instruments. The Shelley settlement, prepared in 1791, after a previous comparison of seven of the best of Mr. Booth's, and settled after a minute attention to every word by Mr. Fearne, furnishes a fair specimen of the plan and language of Mr. Booth. He was not the author of any treatise, but his written opinions were given at great length, and are very elaborate (*a*): several of them were printed in the "Opinions of Eminent Counsel," published in 1791.

Bradley.

XXVII. A celebrated contemporary of Booth was Ralph Bradley, who, for upwards of half a century, practised at Stockton-upon-Tees with great success. He managed, it is said, the concerns of almost the whole county of Durham; and though a provincial counsel, his opinions were every where received with the greatest respect. His drafts, like those of Booth, were prolix to excess. His practical notes dictated to one of his pupils, Mr. Hoare, afterwards recorder of Durham, were collected and arranged by Mr. Frank, a distant relative (*b*); and published after Bradley's death, under the title of "Points in Conveyancing." This is the only publication that bears his name. Bradley, though he lived in a style approaching, it is said, to magnificence, accumulated a considerable fortune, the bulk of which he bequeathed to trustees, in trust to be from time to

(*a*) Butler's Historical Memoirs, ii. 337.

(*b*) Bradley's Practical Points, Pref. x.

time for ever applied in the purchasing and distribution of such books as might have a tendency to promote the interests of virtue and religion, and the happiness of mankind. An amicable suit having been instituted for carrying this trust into effect, Lord Thurlow, to the surprise of every one, set aside the will for *uncertainty* (*a*): thus affording a striking illustration of what has been often remarked, that expressions clear to the writer himself, who has the advantage of knowing his own meaning, are not necessarily intelligible to others. Distinctness of conception does not always produce distinctness of expression.

XXVIII. The most eminent conveyancer, however, of this period was undoubtedly Charles Fearne. He was something more. He was a general scholar; had composed a treatise in the Greek language on the Greek accents, and another on the Retreat of the Ten Thousand; and was profoundly versed in mathematics, chemistry, and mechanics (*b*). These pursuits, however congenial to his capacious mind, he resolved to abandon, and to dedicate himself Fearne.

(*a*) Bradley, Pref. xiii.

(*b*) Butler's Reminiscences, i. 118. "He had obtained," says Butler, "a patent for dyeing scarlet, and had solicited one for a preparation of porcelain." Ibid. Mr. Butler also mentions that a friend of his having communicated to an eminent gunsmith a plan for improving the musket, by diminishing its size and increasing its power, the gunsmith pointed out to him some defects, observing, that "a Mr. Fearne, an obscure law-man, in Breame's-buildings, Chancery-lane, had invented a musket, which, although defective, was much nearer to the attainment of the object."

wholly to the study of the law. He burned his profane library, and wept over its flames (*a*).

Mr. Fearne's first publication was an Historical Legigraphical Chart of Landed Property in England, which appeared in 1769. It is a kind of analytical table, displaying in one view the tenures, mode of descent, and power of alienation of land, from the time of the Saxons to the present era. This ingenious and accurate performance was followed by the celebrated Essay on the Learning of Contingent Remainders and Executory Devises, published in 1772. It then consisted only of 98 pages. Subsequent editions were greatly enlarged. The fourth edition of that part of the work which relates to contingent remainders was published by Mr. Fearne in 1791, together with the opinions of Mr. Booth, Lord Mansfield, and other eminent counsel, on the will which was the subject of the case of *Perrin* v. *Blake*, and a prefatory address to his Lordship. He lived only to complete a few pages of that portion of the work which treats of executory devises: these, with the remainder of the work as it stood in the third edition, were edited by Mr. Powell, in 1795, with copious notes. An improved edition, with notes and appendix, was published by Mr. Butler in 1809. After Mr. Fearne's death, Mr. Mitchell Shadwell selected from his friend's manuscripts a Reading on the Statute of Inrolments, Arguments on the singular Case of General

(*a*) He told Mr. Butler, that the works which he most regretted were the Homilies of St. John Chrysostom to the people of Antioch, and the Comedies of Aristophanes. Rem. i. 119.

Stanwix, and a Collection of his professional opinions; and published them in 1797, under the title of his posthumous works.

XXIX. Mr. Powell, whom I have just named, was himself a conveyancer of no mean repute. To him belongs the merit of having first given a systematic exposition of the subtle doctrine of Powers, since so admirably treated of by Sir E. Sugden. This work appeared in 1787. Mr. Powell had previously published, in 1785, a very useful Essay on Mortgages (*a*); but his earliest work was on the Learning of Devises, in 1783, since edited by Mr. Jarman with distinguished ability. Mr. Powell also published an Essay, on the Law of Contracts and Agreements, in 1790. A collection of his Precedents was edited by Mr. Barton, in 1803. Mr. Barton was himself the author of several works on Conveyancing; and, in 1803, published a considerable collection of Precedents. With the exception of Williams's Precedents in Conveyancing, in 1792, no other collection of any consequence appeared until Mr. Bythewood's, in 1821. The editor lived to finish only a very small portion of his extensive design, since completed by Mr. Jarman, and by Messrs. Parken and Stewart.

Powell.

Barton.

Williams's Precedents in 1792.

Bythewood's Precedents, in 1821.

XXX. A new school in Conveyancing is considered to have been formed by Charles Butler; who, having raised himself to the head of this branch of the profession, continued during many years to hold that con-

Butler.

(*a*) An enlarged and very ably edited edition of this work was published by Mr. Coventry, in 1822.

spicuous station almost without a rival. Eminently successful as a draftsman, he did much by the influence of his example to prune that prolixity in conveyancing which some of his distinguished predecessors had introduced. Greater conciseness, however, he considered to be hardly attainable without abandoning established forms and language so much as to render the innovation a matter of experiment—always hazardous, and never more so than when legal instruments are concerned (*a*). His Annotations on Lord Coke's First Institute, published in 1787, in continuation of those of Mr. Hargrave, though deservedly esteemed, were confessedly too hastily prepared to reach the high standard of his predecessor; who to great patience of research, united an acuteness and discrimination which admirably fitted him for such a task (*b*). Of Mr. Butler's numerous literary works, which are chiefly of an historical and religious cast, it would be irrelevant here to speak. His knowledge appears to have been more various than profound.

Sanders.

XXXI. In this catalogue of Conveyancers it would

(*a*) Butler's Reminiscences, ii. 280.

Character of Mr. Hargrave.

(*b*) "In the law of property, and many other branches of English jurisprudence, Mr. Hargrave was eminently learned: in the law of dignities, the prerogative of the crown, and the history and principles of the constitution, he scarcely had an equal. His rare acquirements were more than once displayed by him in a manner highly honourable to himself and serviceable to his country. When he retired from the practice of the profession, Parliament purchased for the nation his library, upon terms which shewed the public sense of his merit."—Butler's Reminiscences, i. 113.

be unjust to omit the names of Francis Sanders, author of a learned treatise on Uses and Trusts, published in 1791, and James Humphreys, whose luminous work on Real Property, which appeared in 1826, is of distinguished merit. As a compend, concise yet clear, it is unrivalled. His Outlines of a Code, whatever may be thought of the abstract question, bespeaks a mind conversant with the details of practice, and yet above them; capable, as Bacon says, "of casting his eyes upon some things which the actors themselves, especially some being interested, some led and addicted, some declared and engaged, did not or would not see (*a*)." The publication of Mr. Humphreys' book called forth the Contre-Projet of the late John James Park, in 1828. Park was, as he avowed himself, "a self-educated man;" and this, combined with his sedentary way of life, will perhaps account for those literary heresies which so often disfigured his writings. He was, in the best sense of the word, a free-thinker. This character is as conspicuous in his professional opinions as in his printed works. "As a lawyer, Professor Park deservedly ranked high — he was not unworthy of the master under whom he studied (*b*); and one cannot but regret that his promising career should have been so soon cut short; that, when about to reap the harvest of his hopes, the sickle should have fallen from his hand (*c*)." From Mr. Park's valuable MS. Collection of Precedents, in

Humphreys.

Park.

(*a*) Character of Lord Bacon, p. 68.

(*b*) Mr. Preston.

(*c*) Recital-Book, Pref. viii.

For an authentic account of Mr. Park and his works, see Legal Observer, vols. vi. and vii.

ten volumes quarto and three volumes folio, I am enabled to enrich the present work with a great variety of very useful forms. * * * Here I shall close this catalogue; for of living writers it might, perhaps, be invidious to speak.

XXXII. In adding another collection of Precedents in Conveyancing to the list already published, I owe it to the reader and to myself to say, that though, as an editor, I am answerable for whatever defects may be discovered — and he who expects perfection in such a work will seek for what he can nowhere find; — yet the merits of the collection — and an editor may be excused for thinking them not inconsiderable — belong to others; whose names, if it were becoming to mention them, would alone afford sufficient reasons for this publication.

It was my intention to subjoin to the Forms such annotations as seemed necessary to elucidate the principles which they practically exemplify; but finding that this would trespass too much on the topics more appropriately discussed in the first volume, I was obliged to abandon, at least in great measure, this part of my design.

PART I.

COMMON FORMS.

FORMS OF ASSURANCES.

PART I.

Common Forms.

TITLE I.

OF CONSIDERATIONS.

In conveyance from vendor to purchaser.

I. NOW THIS INDENTURE WITNESSETH, that, in pursuance and [further *or* part] performance of the said agreement on the part of the said A. B., and for and in consideration (*a*) of the sum of £—— of lawful money of Great Britain to the said A. B. in hand well and truly paid by the said C. D. at or immediately before the sealing and delivery of these presents, the receipt (*b*) of which said sum of £—— in full for the absolute purchase of the hereditaments hereinafter particularly mentioned, and intended to be hereby released, He the said A. B. doth hereby admit and acknowledge, and of and from the same, and every part thereof, Doth acquit, release, and discharge the said C. D., his heirs, appointees (*c*), executors, administrators, and assigns, for ever, by these presents,

Receipt and release.

(*a*) Vide Vol. I. book ii. chap. iii. "Of Considerations."

(*b*) In addition to this general receipt and release, it is usual to indorse on the deed another receipt to be signed by the vendor, and duly attested. This indorsed receipt, however, not being *under seal*, amounts only to a parol primâ facie acknowledgment of payment; and not to an estoppel. Vide Vol.I. book ii. chap. iii., and the cases there cited.

(*c*) This word "appointees" ought only to be used when a power of appointment is given.

Variation, when paid *to* more than one.

When paid *by* more than one.

[*Or*—the receipt &c. they the said A. A. and B. B. do hereby respectively admit and acknowledge, and of and from the same, and every part thereof, Do, and each of them Doth acquit, release, and discharge the said C. D., his heirs, appointees, executors, administrators, and assigns, for ever, by these presents. *Or*—the receipt &c., and of and from the same &c., Doth acquit, release, and discharge the said A. B. and C. D., and each of them, their and each of their heirs, appointees, executors, administrators, and assigns, for ever, by these presents], He &c.

Deposit and payment of residue.

II. In consideration of the sum of £——, the deposit money paid by the said A. B. as aforesaid, and for and in consideration of the sum of £——, to the said C. D. in hand well and truly paid by the said A. B. at or immediately before the sealing and delivery of these presents, the payment and receipt respectively of which said sums of £—— and £——, making together the sum of £——, the purchase money aforesaid, the said C. D. doth hereby admit and acknowledge, and of and from the same, and every part thereof, Doth acquit, release, and discharge the said A. B., his heirs, appointees, executors, administrators, and assigns, for ever, by these presents.

When paid by Commissioners of Woods and Forests on behalf of his Majesty.

III. In consideration of the sum of £—— of lawful money of Great Britain, at or immediately before the sealing and delivery of these presents to the said A. B. in hand well and truly paid by the said C. D. &c., for and on behalf of his said Majesty, the payment of which said sum of £——, and that the same is in full for the absolute purchase of the fee-simple and inheritance in possession of the messuages or tenements and hereditaments hereinafter described, and intended to be hereby bargained and sold, he the said A. B. doth hereby acknowledge, and of and from the same, and every part thereof, Doth acquit, release, and discharge the said C. D. &c., their heirs, executors, administrators, and assigns, and also his said Majesty, his heirs and successors, for ever, by these presents, He the said &c.

Where several trustees by way of mortgage (under two different trust deeds) made a joint contract for sale of contiguous lands at one price for the whole.

IV. In consideration that the said purchase money or sum of £—— of lawful money of Great Britain, (including the said sum of £—— for the purchase of the hereditaments comprised in the first schedule to these presents), was well and truly paid to the said A. B. &c., or some of them, by the said C. D., to be held and applied by them in such proportions as aforesaid (*a*), Upon the trusts respectively declared by the said several indentures of release of the money which should arise by the sales which were authorized or directed by the same indentures respectively, and in full for the absolute purchase of the said pieces or parcels of land and hereditaments comprised or described in the said several schedules to these presents, and hereby released or intended so to be, with their rights, members, and appurtenances, and of the fee-simple and inheritance thereof, discharged of land-tax and free from incumbrances; the receipt of which said sum of £—— the said A. B. &c. do hereby acknowledge, and of and from the same and every part thereof, Do, and each and every of them Doth, by these presents, acquit, release, and for ever discharge the said E. F. [*the heir of the contractor*], and all other the real and personal representatives of the said C. D.; and also in consideration of, &c.

Consideration and receipt of money from Accountant-General.

V. In consideration that the sum of £—— of lawful money of Great Britain is to be paid (*b*) to the said A. B.

(*a*) This refers to the following recital:—

"And whereas it is understood and agreed, by and between the several persons parties to these presents, that the sum of £——, part of the said sum of £——, shall be considered as the consideration for the purchase of the hereditaments comprised in the first schedule to these presents, and that the sum of £——, residue of the said sum of £——, shall be considered as the consideration for the purchase of the hereditaments comprised in the second schedule to these presents." Recital Book, tit. Apportionment, art. 77, p. 92.

(*b*) Or, "In consideration of the said sum of £——, so paid into the Bank of England as aforesaid."

and C. D., immediately after the sealing and delivery of these presents, by the said Accountant-General of the said Court of Chancery, by his cheque or note on the Governor and Company of the Bank of England, being the said sum of £——, raised in such manner as is hereinbefore mentioned or recited, pursuant to the direction of the said order of the &c.; the receipt of which said sum of £—— the said A. B. and C. D. are to acknowledge by a memorandum to be indorsed on these presents, and of and from the same sum when paid, and every part thereof, they the said A. B. and C. D. Do, and each of them Doth declare, that the said Accountant-General of the said Court of Chancery, and also the said E. F. &c., and every of them, shall be acquitted, exonerated, and discharged for ever by these presents, being in full for the absolute purchase of the inheritance in fee simple in possession of the said hereditaments and premises hereinafter described, and intended to be hereby granted and released.

In a partition made of land, each party taking his share by a separate deed.

VI. In pursuance and performance of the said hereinbefore recited agreement, as far as the same relates to or concerns the messuages &c. hereby released, or otherwise assured or intended so to be, and for carrying the same agreement into effect, and also in consideration of the sum of £—— of lawful money of Great Britain, by the said A. B. well and truly paid unto the said C. D. and E. F., at or immediately before the execution of these presents, in the proportions hereinafter mentioned, (viz.) &c., by way of or in the nature of a price for equality of partition, the receipt of which said several sums of &c. to the said C. D. and E. F. respectively paid as aforesaid, they do hereby severally and respectively acknowledge, and of and from the same, and every part thereof, Do, and each of them Doth acquit, release, and discharge the said A. B., his heirs, executors, administrators, and assigns, and the messuages &c. hereinafter released or intended so to be; and do also release, acquit, and discharge the future purchasers and other owners of the same messuages &c. from all obligation to see or inquire whether the said partition hath been com-

pleted or carried into effect by mutual conveyances to each of them, the said C. D. and E. F., his heirs and assigns; or whether the sums payable for equality of partition have been paid (*a*).

When paid by parceners in certain proportions.

VII. In pursuance and part performance of the said agreement, and in order to effectuate the said partition, and for and in consideration of the said sum of £—— of lawful money of Great Britain, to the said A. B. and C. D. in hand well and truly paid by the said E. F. and G. H., in the manner and proportions hereinbefore mentioned (*b*), at or immediately before the sealing and delivery of these presents, the receipt of which said sum of £——, in the proportions hereinbefore mentioned, the said A. B. and C. D. do hereby respectively admit and acknowledge, and of and from the same, and every part thereof, Doth acquit, release, and discharge the said E. F. and G. H., their respective heirs, executors, and administrators, for ever, by these presents; and for and in consideration of the sum of 10*s.* of like lawful money, to each of them the said A. B., C. D., E. F., and G. H. paid by the said I. K., at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, &c.

Nominal consideration in release of part of land from rent-charge.

VIII. In pursuance and performance of the said agreement, and in consideration that the said manors, messuages, lands, and hereditaments so contracted to be sold as aforesaid to the said A. B. are to be and remain a fund for the payment of the said annuity or rent-charge of £—— (*c*);

(*a*) As to titles derived under a partition at common law, see Vol. I. book i. chap. ii. sect. 3, art. 48.

(*b*) Vide Recital Book, tit. Partition, p. 308.

(*c*) As to the operation of a release of part of land from a rent-charge, see St. Germyn's Doct. & Stud. book ii. c. 16, p. 85, (ed. 1604); Littl. sect. 222; Co. Litt. 147; Shepp. Touch. 345, by Preston. The following opinion, given by the late Mr. Butler, in 1784, fully elucidates the subject:—"When a rent-charge is granted out of lands, it is supposed to issue out of every part of the lands, and that every part of the lands is subject to a distress for the whole rent. When the grantee purchases, or

and in consideration of 10*s.*, of lawful money of Great Britain, to the said C. D. paid by the said E. F. immediately

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aliens, part of the land, it can no longer have this, its original operation; and it seems upon this ground to have been considered by the old lawyers as totally extinguished by such purchase or alienation: besides, according to the old feudal principles, nothing against common right could be apportioned. Now, a rent-charge was supposed to be against common right, the grantee of the rent-charge being subject to no feudal services, and being in fact a burthen on the tenant, who had to perform them. The consequence of this doctrine would be, that Lady M.'s releasing a part of the lands from payment of her jointure would be an extinguishment of her whole jointure. Supposing this to be so, the power inserted to remedy it, [power of distress and entry], would not be a complete security. Lord Coke says, it would amount to a new grant;—then, if the estate should have been incumbered subsequent to the grant of the original rent-charge, but prior to the release and proviso, these incumbrances would be let in against the rent-charge: and though such proviso might undoubtedly be so worded as to make it operate in equity as a continuation of the rent-charge, yet, as the incumbrancers would have the legal estate, and an equal right in equity with the grantee of the rent-charge, they would of course be preferred to him in equity.

"But the principles on which such a release is supposed to operate as an extinguishment are called in question by many modern counsel of the first eminence. Considering these exclusively of their dependence on the doctrine of the old law books, they may seem to have little weight; for it may be said that no good reasons can be given why the grantee of the rent-charge should not lessen, or weaken, or give up, any part of his security, if he thinks proper. And as the old law seems in this respect to be solely grounded on the feudal principles, which the abolition of the feudal tenures must have considerably undermined, there appears to be some reason to think, that, if the principles that I have mentioned ever existed in the above extent, they are now superseded. On these or other grounds, many modern conveyancers of the first eminence have not scrupled to let jointresses release, and join in sales of, a part of the estate charged with their jointures, but with the caution of inserting a proviso to continue the remaining lands subject to the payment of it. But there are others who consider it unsafe, or, at least, as an hazardous experiment; and if the jointress has notice of any incumbrances subsequent to the grant of her rent-charge, which affects the lands not released; but, which do not affect the lands released, the value of their security is so much lessened as to be a real injury to them; and equity might, perhaps, relieve them against it, at the expense of the jointress who occasioned it. Upon the whole, therefore, it does not appear advisable for the jointress to release any part of the lands charged with her jointure; and all that

before the execution of these presents, the receipt whereof is hereby acknowledged, she the said C. D., &c.

Nominal consideration paid to trustee.

IX. In consideration of the sum of ten shillings of lawful money of Great Britain to each of them the said A. B. and C. D. paid by the said E. F., at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said C. D., at the request and by the directions of the said A. B., testified by his being a party to and sealing and delivering these presents, Hath &c.

In conveyance of an estate tail to a purchaser in fee-simple.

X. For defeating and destroying all estates tail of and in the messuages &c. hereby released or otherwise assured or intended so to be, and all reversions and remainders expectant or dependent on the same estates tail, and all conditions and collateral limitations annexed thereto (*a*),

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can be expected from the jointress upon this occasion is, that she should enter into a covenant or agreement not to distrain upon or claim any part of her jointure from the lands released, or the owners or occupiers thereof. This, as it may be pleaded as an absolute release, will equally serve the benefit of the owner of the inheritance; and I have altered the draft accordingly."

In 1806, Mr. Butler, Mr. Preston, and two other learned counsel gave a joint opinion that, when it is wished to release part of an estate charged with rent, the only safe and correct practice is, for the owner of the rent to assign the rent to a trustee of his nomination, with the consent of the owner of the estate; upon trust to receive the rents out of certain part of the hereditaments, (being those intended to be made liable), and to permit the other lands to be held as if the same were discharged of and from the rent-charge; with a grant or agreement by the owner of the land, that the land intended to remain charged with the rent shall remain and be charged with the full amount of the rent, without any deduction or abatement whatsoever; and the term of years, when there is any in the lands intended to be exonerated, may be assigned in trust for the purchaser to attend the reversion, or be surrendered, and by that means extinguished.

A much simpler mode, and equally effectual, is for the annuitant to execute an *equitable* release, accompanied with an express declaration that the release shall not operate at law. A precedent for this purpose will be given in a subsequent part of the present work.

(*a*) As to alienation by tenant in tail, by force of the stat. 3 & 4 Will. IV. c. 74, s. 15, see Vol. I. book iii. chap. 1.

and for conveying and assuring the same messuages &c. to the use of the said A. B. and his heirs in fee-simple, [*or*, to the uses, upon the trusts, and for the ends, intents, and purposes hereinafter expressed and declared concerning the same], and in consideration of the sum of £—— &c. (Vide Art. I.)

Bill of exchange.

XI. In consideration of the said bill of exchange for the sum of £——, so drawn and accepted as hereinbefore is mentioned, the receipt of which said bill of exchange and that the same when duly paid will be in full for the purchase money aforesaid, he the said A. B. doth hereby acknowledge (*a*).

Grant of annuity.

XII. In consideration of the annuity or yearly rent-charge hereinafter secured to the said A. B. and C. his wife, and their assigns, for and during the natural lives of the said A. B. and C. his wife, and the life of the longer liver of them,

When secured by a separate deed.

He the said A. B. hath &c. [*or*, in consideration of the said annuity or yearly rent-charge of £—— so secured to the said A. B. and C. his wife as aforesaid by the said hereinbefore in part recited indenture of the &c.—*or*, of even date herewith].

Transfer of stock.

XIII. In consideration of the said sum of £—— Three per cent. Consolidated Bank Annuities so transferred into

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(*a*) Sometimes the following clause is added :—

"But the said security and acknowledgement, being without prejudice to any remedy or means for compelling payment of the said sum of £——, when payable, according to the custom of merchants, or to the amount thereof being a lien and charge upon the said hereditaments until the same shall be fully paid and satisfied." Hall, p. 86.—an unpretending (but unfinished) work, of considerable merit. The vendor's lien for unpaid purchase money is not however extinguished by taking bills or promissory notes. Vide Vol. I. book ii. chap. iii.

and now standing in the joint names of the said A. B. and C. D. in the books of the Governor and Company of the Bank of England kept for entering transfers of such stock as hereinbefore is mentioned, the transfer and receipt whereof the said A. B. and C. D. do hereby respectively admit and acknowledge, and of and from the same, and every part thereof, do hereby respectively acquit, release, and discharge the said E. F., his heirs, executors, administrators, and assigns.

In consideration of bankers' accepting and honouring bills and drafts.

XIV. In pursuance of the said agreement on the part of the said A. B., and for effectually saving harmless and keeping indemnified the said C. D., E. F., and G. H., their executors and administrators, of and from all losses, costs, charges, damages, and expenses which they or any or either of them shall or may suffer, sustain, and expend or be put unto for or by reason or means of their accepting, discharging, paying, or duly honouring the drafts or bills of exchange which he the said A. B. shall or may from time to time draw on the said C. D. &c., and in consideration &c., [*nominal*], He the said A. B. hath &c.

Where the land belonged to two as tenants in common, and one having died, devised to trustees for sale, who, with the surviving tenant in common, sold the entirety.

XV. In consideration of the sum of £—— of lawful money of Great Britain, in hand well and truly paid by the said A. B. immediately before the execution of these presents, in manner following; that is to say, as to one moiety or half part thereof, to the said C. D. and E. F., to be by them held and applied upon the trusts declared by the said in part recited will and testament of the said G. H. of the money which should arise by the sales thereby authorized and directed; and as to the other moiety or half part thereof, to the said E. F. for his own proper use, and which said sum of £—— is in full for the absolute purchase of &c., (vide Art. I.); the receipt of one moiety of which said sum of £—— the said C. D. and E. F., as such trustees as aforesaid, do hereby acknowledge, and the receipt of the other moiety of the said sum of £—— the said E. F. doth hereby acknowledge, and of and from the said sum of £—— they the said C. D. and E. F. Do, and each of them Doth acquit, release, &c. (Vide Art. I.)

Where the purchase is made by trustee with trus -money at the instance of cestuis que trust.

XVI. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. in hand well and truly paid by the said C. D., with the privity and consent and by the direction and appointment of the said E. F. and G. H., testified by their severally executing these presents, [*or*, testified by this their deed or instrument in writing under their hands and seals; *or otherwise, according to the terms of the settlement*], He the said &c.

Where conveyance is made to the heir at law of the purchaser, who died after payment of the purchase-money and before conveyance.

XVII. In consideration that the said purchase money or sum of £—— was well and truly paid to the said A. B. by the said C. D. in his lifetime, the receipt and payment of which said sum of £—— the said A. B. doth hereby admit and acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said E. F. and all other the real and personal representatives of the said C. D. deceased, for ever, by these presents (*a*), He the said &c.

Where part has been already received, and residue is now paid.

XVIII. In pursuance of the said several agreements, and in consideration of the said sum of £—— already paid to the said A. B. as aforesaid in part of the said sum of £——, and in consideration of the sum of £—— of lawful money of Great Britain, residue of the said sum of £——, to the said A. B., at the request and by the direction of the said C. D., testified by his executing these presents, well and truly paid by the said E. F. before the execution of these presents, in full satisfaction and discharge of the balance of the purchase money now due and owing from the said C. D. to the said A. B. as aforesaid under and by virtue of the said hereinbefore recited agreement between the said C. D. and A. B. for the sale and purchase of the said messuages and hereditaments hereby released or intended so to be, the receipt of which said sums of £—— and £——, making together the purchase money or sum of £——, the said A. B. doth hereby

(*a*) Vide Vol. I. book iii. chap. i. sect. 1., "Of the contract and its consequences."

acknowledge, and of and from the said sum of £——, and every part thereof, Doth by these presents acquit, release, and discharge the said E. F. and C. D. respectively, and their respective heirs, executors, administrators, and assigns, and every of them.

Where freeholds are released and copyholds covenanted to be surrendered by one deed.

XIX. In consideration of the sum of £—— of lawful money of Great Britain, being the purchase money for the said freehold hereditaments, well and truly paid to the said A. B. by the said C. D. immediately before the sealing and delivery of these presents, the receipt of which said sum of £——, and also of the sum of £—— for the said copyhold hereditaments (*a*), making together the sum of £——, the said A. B. doth hereby acknowledge, and of and from the same, and every part thereof, Doth hereby acquit, release, and for ever discharge the said C. D., his heirs, appointees, executors, administrators, and assigns, He &c.

When paid to executrix during husband's life for a reversionary interest.

XX. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B., as the executrix of the last will and testament of the said C. D., well and truly paid by the said E. F., immediately before the execution of these presents, with the privity, consent, and approbation of the said C. B., the husband of the said A. B., and in full for the absolute purchase of the said reversionary term of—— years determinable as aforesaid, the receipt of which said sum of £—— she the said A. B. doth hereby acknowledge, and of and from the same, and every part thereof, she, and also the said C. B., Do hereby acquit, release, and for ever discharge the said E. F., his heirs, executors, administrators, and assigns, and every of them.

(*a*) When copyholds are purchased with other property, of a different tenure, at an entire price for the whole, it is necessary to apportion the consideration, in order that some part of the ad valorem duty may be paid on the *surrender;* for that, as regards copyholds, is the "principal" instrument within the meaning of the Stamp Act, 55 Geo. 3, c. 184. For Forms of Recitals of Apportionment, see Recital Book, p. 91.

Re-purchase of annuity.

XXI. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. in hand well and truly paid by the said C. D., at the request and by the direction of the said E. F., (testified by his being a party to and executing these presents), the receipt of which said sum of £——, in full for the re-purchase of the said annuity of £——, the said A. B. doth hereby admit and acknowledge, and of and from the same, and every part thereof, Doth acquit, release, and discharge the said C. D., his heirs, executors, administrators, and assigns, and also the said messuages &c., by these presents.

When the sale and purchase are both under the decree of the Court.

XXII. In pursuance and obedience to the several hereinbefore recited decrees and decretal orders and proceedings of the High Court of Chancery, and for carrying the same into complete effect, and also in consideration of the said sum of £——, carried over to the credit of the said cause, A. B. against C. D. as aforesaid, the application of which said sum they the said A. B. &c. do hereby acknowledge, and of and from the same, and every part thereof, as far as they are respectively entitled, Do hereby acquit, release, &c. (Vide Art. I.)

Where it is to be held upon trusts of will.

XXIII. In consideration of the sum of £—— of lawful money of Great Britain, by the said A. B. well and truly paid unto the said C. D. and E. F. immediately before the execution of these presents, to be held by them upon the trusts, and for the ends, intents, and purposes in and by the said last will and testament of the said A. A. declared and expressed of and concerning the monies to arise from the sales thereby directed; the receipt of which said sum of £——, in full for the absolute purchase of the messuages or tenements and hereditaments hereinafter described and hereby released or otherwise assured, and the fee-simple and inheritance thereof, free from incumbrances, (except the existing leases thereof), the said C. D. and E. F. do hereby acknowledge, and of and from the same, and every part thereof, Do, and each and every of them Doth, by these presents, acquit, release,

and for ever discharge the said A. B., his heirs, appointees, executors, administrators, and assigns.

Where part of purchase money is to be held by trustees upon trusts declared thereof by trust deed.

XXIV. In consideration of the sum of £—— of lawful money of Great Britain, including the said sum of £——, to the said A. B. and C. D. well and truly paid by the said E. F., before the execution of these presents, to be held and applied by them the said A. B. and C. D. upon the trusts declared by the said indenture of release of and concerning the money which should arise from the mortgages or sales which were authorized by the same indenture of release, and in full for the absolute purchase of the said closes, pieces or parcels of land and hereditaments hereby released or otherwise assured, or intended so to be, with their rights, members, and appurtenances, and of the fee-simple and inheritance thereof, free from all incumbrances, (except as hereinafter is excepted), the receipt of which said sum of £—— the said A. B. and C. D. do hereby acknowledge, and of and from the same sum, and every part thereof, they, and also the said G. H., Do, and each and every of them Doth by these presents, acquit, release, and for ever discharge the said E. F., his heirs, executors, administrators, and assigns, and every of them.

Where part paid and part secured on mortgage.

XXV. In consideration that the sum of £——, part of the said purchase money, and the interest thereof, are to be secured to the said A. B. by a mortgage of the said messuages &c. hereby released or otherwise assured or intended so to be, for a term of 1000 years, by means of the indenture of mortgage already prepared as aforesaid, and to bear date on the day next after the day of the date, and to be executed after the execution, of these presents, and also in consideration of the sum of £——, to the said A. B. well and truly paid by the said C. D. before the execution of these presents, as and for the remainder of the said sum of £——, and in full for the absolute purchase of the fee-simple and inheritance of the messuages &c. hereby released or intended so to be, subject nevertheless to the

mortgage to be so made as aforesaid, the receipt of which said sum of £—— he the said A. B. doth hereby &c.

When the lands are conveyed in part satisfaction of a debt.

XXVI. In consideration that the said A. B. is by these presents released and discharged or to be released and discharged of and from the sum of £—— of lawful money of Great Britain, part of the debt now due and owing from the said A. B. to the said C. D., and which said sum of £—— is in full for the absolute purchase of the messuages &c. hereby released or intended so to be, and of and from which said sum of £——, part of the said debt, and every part of the said sum, the said C. D. Doth by these presents acquit, release, and for ever discharge the said A. B., his heirs, executors, administrators, and assigns, and every of them.

Where the lands were subject to a recent mortgage, and the mortgage money was to be considered as part of the purchase money, and the purchaser to satisfy the same.

XXVII. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. [*vendor*] partly paid and partly secured, to be paid in manner hereinafter expressed, (that is to say), in consideration of the said sum of £——, by the said C. D. [*mortgagee*] to the said [A. B.] [*vendor*] well and truly paid, before the execution of these presents as aforesaid; And in consideration that the said E. F. [*purchaser*] is to pay the said sum, whenever the payment thereof shall be required by the said C. D. (*mortgagee*), his executors, administrators, or assigns, or to provide money to be applied in taking a transfer of the said mortgage; And also, in consideration of the sum of £——, to be paid by the said E. F. [*purchaser*], his heirs, executors, administrators, or assigns, to the said A. B., his executors, administrators, or assigns, according to the covenants and trusts hereinafter contained, the receipt of which said sum of £—— the said A. B. doth hereby admit and acknowledge, and of and from the same and every part thereof Doth acquit, release, and discharge the said E. F., his heirs, executors, administrators, and assigns, and every of them.

When paid in satisfaction of sums charged on the estate by will.

XXVIII. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B., C. D., and E. F. in hand well and truly paid by the said G. H., at or

immediately before the sealing and delivery of these presents, (with the consent and by the approbation of &c., testified by their being parties to and sealing and delivering these presents), the receipt of which said sum of £—— they the said A. B., C. D., and E. F. do hereby admit and acknowledge, and that the same is in full satisfaction and discharge of the said several sums of money hereinbefore mentioned to be charged by the will of the said B. B. upon the lands and hereditaments hereinafter mentioned, and intended to be hereby released, and of and from the same and every part thereof Do acquit, release, and discharge the said G. H., his heirs, appointees, executors, administrators, and assigns, for ever, by these presents.

Application of purchase money in part discharge of mortgage, and residue to vendor.

XXIX. In pursuance and performance of the said recited contract or agreement, and in consideration of the sum of £—— of lawful money of Great Britain, by the said A. B. [*purchaser*] well and truly paid to the said C. D. [*mortgagee*], immediately before the execution of these presents, at the instance and request and by the direction and appointment of the said E. F. [*mortgagor*], in part satisfaction and part discharge of all principal money and interest due and owing to the said C. D. as aforesaid, the receipt of which said sum of £—— the said C. D. doth hereby acknowledge, and of and from the same and every part thereof Doth hereby acquit, release, and for ever discharge the said A. B., his heirs, appointees, executors, administrators, and assigns, and every of them; And also, in consideration of the sum of £—— of like lawful money, residue of the said purchase money or sum of £——, well and truly paid by the said A. B. unto the said E. F. immediately before the execution of these presents, the receipts of which said several sums of £—— and £——, making together the sum of £——, in full for the absolute purchase of the messuages, lands, and other hereditaments hereinafter particularly described, and hereby released or otherwise assured, or intended so to be, the said E. F. doth hereby acknowledge, and of and from the same and every part thereof Doth hereby acquit, release, and for

ever discharge the said A. B., his heirs, appointees, executors, administrators, and assigns, and every of them.

Application of part of purchase-money to the discharge of mortgage.

XXX. In consideration of the said sum of £—— of lawful money of Great Britain, to the said A. B., at or immediately before the sealing and delivering of these presents, in hand well and truly paid by the said C. D., at the request and by the direction of the said E. F., testified by his being a party to and executing these presents, the receipt of which said sum of £——, in full discharge of all principal monies and interest due upon or by virtue of the said mortgage or security of the &c., the said A. B. doth hereby admit and acknowledge, and of and from the same and every part thereof Doth acquit, release, and discharge the said C. D., his heirs, executors, administrators, and assigns, and also the said E. F., his heirs, executors, and administrators, for ever, by these presents; And also for and in consideration of the sum of £—— of like lawful money, to the said E. F. in hand well and truly paid by the said C. D. at or immediately before the sealing and delivering of these presents, the payment and receipt respectively of which said sums of £—— and £——, making together the sum of £——, the purchase money aforesaid, the said E. F. doth hereby admit and acknowledge, and of and from the same and every part thereof Doth acquit, release, and discharge the said C. D., his heirs, appointees, executors, administrators, and assigns, for ever, by these presents.

When purchase-money is applied in part payment of mortgages, and the estate sold is discharged from the residue and all contribution on account thereof.

XXXI. For carrying the said recited contract or agreement into execution, and in consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. in hand well and truly paid by the said C. D. immediately before the execution of these presents, on the nomination and at the instance and request of the said E. F., testified by his executing these presents, and in part of the principal monies and interest due to the said A. B. on the security of the several mortgages made to him as aforesaid, and in full for the absolute purchase of the fee-simple and inheritance of the said freehold and copyhold lands and hereditaments

hereinafter released and covenanted to be surrendered or otherwise assured, or intended so to be, discharged of and from the payment of all or any part of the residue of the same principal money and interest, or any contribution on account thereof.

When paid to committee in discharge of mortgage.

XXXII. In consideration of the said sum of £——, so paid by the said A. B. to the said C. D., as such committee as aforesaid, in full discharge of all principal money and interest due upon or by virtue of the said hereinbefore in part recited indenture of mortgage of the &c., He the said &c.

Payment recited in indenture of even date.

XXXIII. In consideration of the said sum of £——, paid by the said A. B. as in the hereinbefore in part recited indenture of even date herewith and hereinbefore is mentioned.

Payment into the Bank, pursuant to Act of Parliament.

XXXIV. In consideration of the sum of £—— of lawful money of Great Britain, having been paid into the Bank of England according to the direction of a certain Act of Parliament made and passed in the —— year of the reign of his present Majesty, intituled "An Act for" &c., the payment of which said sum of £—— into the Bank as aforesaid the said A. B. doth hereby admit and acknowledge, and of and from the same and every part thereof Doth acquit, release, and discharge &c. (Vide Art. I.)

Loan.

XXXV. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. advanced and lent by the said C. D., before the execution of these presents, the receipt of which said sum of £—— the said A. B. doth hereby acknowledge, and of and from the same and every part thereof Doth by these presents acquit, release, and for ever discharge the said A. B., his heirs, executors, and administrators, and every of them.

When mortgage is discharged, and estate conveyed by indorsement from mortgagee's trustee.

XXXVI. In consideration of the said several sums of £——, £——, and £——, making together the sum of £——, to the said A. B. well and truly paid by the said C. D., or on his behalf, immediately before the execution of

these presents, in full for all principal money, interest, and costs, due and owing to the said A. B. on the mortgage or security made or given to him by the within-written indenture, the receipt of which said sum of £—— the said A. B. doth hereby acknowledge, and of and from the same sum of £——, and of and from all principal money, interest, and costs due on the security of the within-written indenture, the said A. B. doth acquit &c., [vide Art. I.]; And also in consideration of 10*s.* of like lawful money, to the said E. F. paid by the said C. D. &c.

Debt due on mortgage.

XXXVII. In consideration of the said sum of £—— so due and owing to the said A. B. by the said C. D., upon or by virtue of the said hereinbefore mentioned security, and of the release hereinafter contained, He the said C. D. hath &c.

Where purchase money is collaterally secured.

XXXVIII. In consideration of the said sum of £——, the purchase money aforesaid, so secured to the said A. B. as hereinbefore is mentioned, and for and in consideration of the sum of 10*s.* of lawful money of Great Britain, to the said A. B. paid by the said E. F., at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He the said A. B. hath &c. (*a*).

When part is secured by bond.

XXXIX. In consideration that the said bond (*b*) of the said A. B., bearing even date with these presents, hath

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(*a*) To rebut the presumption of lien, insert the following clause in the deed:—

"And it is hereby expressly declared, that the said A. B. shall not have any lien on the premises hereinbefore granted and conveyed, or expressed and intended so to be, for the purchase money aforesaid, or any part thereof, any rule of equity to the contrary thereof in anywise notwithstanding."

The recital that payment has been collaterally secured, may be thus expressed:—

"And whereas the payment of the said sum of £——, in the proportions and at the time aforesaid, hath been secured by the said C. D. to the said A. B., which the said A. B. doth hereby admit and acknowledge."

(*b*) The bond ought to be recited in the usual form. See Recital Book, p. 145.

been given and entered into to and with the said C. D. as aforesaid, for securing the principal sum of £—— and interest, and also in consideration of the sum of £—— of lawful money of Great Britain, to the said C. D. in hand well and truly paid by the said A. B., at or immediately before the sealing and delivery of these presents, making, together with the said principal sum of £——, so secured by the said bond of the said A. B. as aforesaid, the sum of £——, being the full consideration for the purchase of the said messuages &c., and all the estate and interest of the said C. D. therein, discharged (*a*) from any lien or claim, at law or in equity, by reason that part of the said consideration is secured by the said bond, the receipt &c., He the said &c.

Extinguishment of lien for money secured by bond.

XL. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. in hand well

Where part paid and residue secured by a demise of the estate and the purchaser's bond.

(*a*) Prest. Conv. ii. 424. If the lien is not to be discharged, say, "but all liens for and in respect of all sums secured by the said bond doth hereby reserve."

In connection with this subject, it may be useful to observe, that "where conveyance is made prematurely, before money paid, the money is considered as a lien on the estate in the hands of the vendee; so, where money is paid prematurely, the money is considered as a lien on the estate in the hands of the vendor, for the personal representatives of the purchaser." Per Sir Thomas Clarke, in *Burgess* v. *Wheate*, 1 Black. 123, 1 Eden, 211. And this rule holds, whatever be the tenure of the estate, whether freehold, copyhold, or leasehold, *Winter* v. Lord *Anson*, 3 Russ. 493; or into whose hands soever it may pass, (with the exception of a purchaser for valuable consideration *without notice*), *Mackreth* v. *Symmons*, 15 Ves. 329, and the cases there cited by Lord Eldon; even although the consideration is, upon the face of the instrument, or by an indorsed receipt, expressed to be paid. *Coppin* v. *Coppin*, 2 P. Wms. 291; *Ryle* v. *Haggie*, 1 Jac. & W. 234, 15 Ves. 337, 1 Sim. & Stu. 444. To extinguish this lien, there must be "evidence clear and convincing," or, as it is sometimes expressed, "declaration plain" or "manifest intention," of a purpose to rely not any longer on the estate, but solely upon the personal credit of the vendee, or upon some other independent security. 15 Ves. 342, 348; 3 Russ. 491. It is a question, therefore, of "*intention*," depending entirely on the circumstances of each case. Vide Vol. I. book ii. chap. iii., and the cases there cited.

Of the vendor's lien for unpaid purchase-money.

and truly paid by the said C. D., at or immediately before the execution of these presents, the receipt of which said sum of £—— he the said A. B. doth hereby acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said C. D., his heirs, executors, administrators, and assigns, and any of them; And also, in consideration that the sum of £——, the residue of the said purchase money, is secured by the said A. B., his executors, administrators, and assigns, by the term of years hereinafter limited in use to him of and in the said messuages, lands, and hereditaments, and by the bond of the said C. D., bearing even date with these presents, He the said A. B. hath &c.

Where part of consideration is secured to be paid at a future time.

XLI. In consideration that the sum of £——, part of the money agreed to be given by the said A. B. to the said C. D. for the purchase of the said freehold and copyhold lands &c., hath been left in the hands of the said A. B., to be paid according to the proviso or agreement for redemption hereinafter contained, and for securing the payment of such sum of £——, and interest thereon, in manner hereinafter mentioned, and also in consideration of &c., [*nominal consideration*], He the said A. B. hath &c.

When paid to avoid the expense of proving will in Chancery.

XLII. In consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. in hand well and truly paid by the said C. D., at &c., the receipt &c.; and to avoid the charges and expenses of proving the will of the said C. D. in Chancery by the witnesses thereto (*a*), and in order to ratify, confirm, and establish the said will, and the said devise thereby made of the said copyhold and freehold lands, tenements, and hereditaments, and for divers other good causes and valuable considerations the said A. B. thereunto moving, He &c.

(*a*) A purchaser *cannot* now, it is conceived, insist upon the vendor's establishing a will against the heir. *Colton* v. *Wilson*, 3 P. Wms. 190; *Morrison* v. *Arnold*, 19 Ves. 673, 8 Bro. P. C. 145; and see *Bellamy* v. *Liveridge*, Sugd. Vend. & Pur. i. 370.

Rent and covenants in lease, conferring a right of sporting, &c.

XLIII. In consideration of the rent and covenants hereinafter reserved and contained, and which by and on the part of the said A. B., his executors, administrators, and assigns, are to be paid, observed, and performed, and to the end and intent that during the term hereby granted the said A. B. may possess the same right of sporting, hunting, coursing, shooting, fishing, and appointing a gamekeeper, and preserving game and fish within the said manor, as are now possessed by the said C. D., He &c.

Consideration of stock and property of wife becoming that of husband.

XLIV. In pursuance and performance of the said agreement on the part of the said A. B., and in consideration tha tthe money, stocks, funds, and other personal estate of the said C. D., to which she is now entitled, are immediately after the solemnization of the said intended marriage to become the absolute property of the said A. B., notwithstanding his death in the life-time of the said C. D., and before he shall obtain the possession of the same respectively (*a*), and for the purpose of making a provision for the said E. F., and the issue, if any, of the said intended marriage, He the said A. B. hath &c.

Marriage of ward of Court, with consent of guardian.

XLV. In pursuance of the said proposals, and of the said report thereon, and of the said order confirming the same, and in consideration of the said intended marriage, to which said marriage the said A. B. doth signify her consent in writing by signing and sealing these presents, It is hereby declared and agreed, &c.

Marriage and covenant.

XLVI. In consideration of the said intended marriage, and of the covenant hereinafter contained on the part and behalf of the heirs, executors, and administrators of the said A. B. to be performed, and in pursuance and part perform-

(*a*) This form, it will be remarked, applies to the case of a settlement *before* marriage. If *after* marriage, the wife's title by survivorship could not be thus bound. *Stamper* v. *Barker*, 5 Madd. 157. As to wife's choses en action, see Vol. I. book iii. chap. vi., where the subject is treated of at large.

ance of the said agreement, and in order to make a provision for the said C. D. and the issue of the said intended marriage, It is hereby agreed &c.

Marriage—money paid and secured to be paid.

XLVII. In consideration of the said intended marriage, and of the sum of £—— of lawful money of Great Britain, to the said A. B. by the said C. D. in hand well and truly paid at or before the sealing and delivery of these presents, the receipt of which said sum of £—— the said A. B. doth hereby acknowledge, and from the same sum of £—— doth acquit, release, and discharge the said C. D., his heirs, executors, administrators, and assigns, and in consideration of the sum of £—— by the said C. D. secured to be paid to the said A. B. at the decease of the said C. D., He &c.

Natural love.

XLVIII. In consideration of the natural love and affection which the said A. B. hath and beareth towards the said C., his wife, It is hereby agreed, &c.

Marriage had and solemnized, and intended dismissal of bill in Chancery.

XLIX. In pursuance and performance of the said agreement, so far as the same, by reason of the infancy of the said A. B., can now be carried into effect, and in consideration of the marriage had and solemnized between the said C. B. and A. his wife, and of the intended dismissal of the said bill as aforesaid, It is hereby agreed, &c.

Marriage—grant and covenant.

L. In consideration of a marriage agreed upon and intended to be shortly had and solemnized between the said A. B. and C. D., and of the grant, release, and confirmation hereinafter made, and the covenant hereinafter entered into by the said D. D., the father of the said C. D., and in consideration of the sum of 10*s.* &c., He &c.

Nominal consideration in settlement, pursuant to testator's intention.

LI. In pursuance and performance of the said agreement to carry into effect the intention of the said testator, and to make a settlement on and provision for the said A. B., and for and in consideration of the sum of 10*s.* of lawful money of Great Britain, to the said C. D. in hand paid by

the said E. F., at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He the said &c.

LII. In pursuance and performance of the said agreement with respect to the sum of £——, appointed to the said A. B. as aforesaid, and of the said sum of £——, secured by the bond of the said C. D., and in consideration of the said intended marriage, and of the settlement to be made by the said C. D. of the manors, messuages, lands, tenements, and hereditaments in the county of H., with their appurtenances, to certain uses in favour of the said C. D. and A. B., and the issue of the said intended marriage, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between &c. He &c.

Marriage, and settlement of even date.

TITLE II.

OF OPERATIVE WORDS.

Feoffment.

I. 1. HATH given, granted, enfeoffed, and confirmed, and by these presents Doth (*a*) give, grant, enfeoff, and confirm, unto the said A. B. and his heirs, All &c.

Variation where trustees join.

2. The said A. B. and C. D. at the request and by the direction of the said E. F., testified by his being a party to and sealing and delivering these presents, Have, and each of them Hath, bargained, sold, and enfeoffed, and by these presents Do, and each of them Doth, bargain, sell, and enfeoff (*b*); and the said E. F. Hath given, granted, en-

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(*a*) "The best way," says the author of the Touchstone, i. 232, "is to grant by words in the present tense as well as in the preterperfect. But a grant by words of the preterperfect tense only, as by dedi et concessi only, without words of the present tense, is good." In a feoffment, certainly, both tenses are rightly used; for since the Statute of Frauds, 29 Car. II. c. 3, the estate passes by the united force of the livery of seisin and the deed of feoffment. Before that act, livery of seisin was alone sufficient. On the subject of "Operative Words," see Vol. I. book ii. chap. iv. In most of the Forms given under the present title, several words are introduced, not peculiarly appropriate to the assurances in which they occur, but belonging to others. This practice is commonly justified on the ground, that if the deed cannot operate, *e. g.*, as a feoffment, it may as a grant. In the present day, the Courts look rather to the *intention* of the parties, without much regard to the technical propriety of the operative words, and construe the deed accordingly.

(*b*) Persons not beneficially interested, *e. g.* trustees, usually object to convey by the word "grant," on the ground that it may be held to amount to a warranty of title. As to this, see Vol. I. book ii. chap. iv. If an incorporeal hereditament is the subject of conveyance, the word "grant" is the appropriate term, and ought to be used. In such a case, trustees (if scrupulous) may grant "by way of conveyance only, and not in or for any warranty of title." It may be here remarked, that the

feoffed, and confirmed, and by these presents doth give, grant, enfeoff, and confirm, unto the said G. H., his heirs and assigns, All &c.

III. Hath given, granted, bargained, sold, aliened, released, and confirmed, and by these presents Doth give, grant, bargain, sell, alien, release, and confirm, unto the said A. B. (in his actual possession &c.), and his heirs, in exchange for the ground and land, soil and hereditaments, hereinbefore mentioned to be given, granted, and confirmed by the said A. B. unto the said C. D., his heirs and assigns as aforesaid, All &c. Exchange.

IV. 1. Have, and each of them Hath [granted], demised, and to farm letten, and by these presents Do, and each of them Doth [grant], demise, and to farm let (*a*), unto the said A. B. &c. Lease.

2. Hath granted, bargained, sold, and demised, and by these presents Doth &c. Underlease in mortgage.

3. Doth grant, limit, appoint, and to farm let (*b*), unto the said A. B. &c. Lease under a power.

4. He the said A. B., on the nomination and at the instance and request, and by the direction and appointment of the said C. D., testified by his executing these presents, and In demises of freehold and copyhold.

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writ of warrantia chartæ, along with thirty or forty other writs, whose uncouth names hardly ever reached the ears of a modern student, was abolished by the stat. 3 & 4 Will. IV. c. 27, s. 36.

(*a*) *Ad firmam tradidi.* Farm, or feorme, is an old Saxon word, signifying provisions. "It came to be used," says Blackstone, ii. 317, "instead of rent or render, because anciently the greater part of rents were reserved in provisions—in corn, in poultry, and the like; till the use of money became more frequent. So that a farmer, *firmarius*, was one who held his lands upon payment of a rent or *feorme;* though at present, by a gradual departure from the original sense, the word *farm* is brought to signify the very estate or lands so held upon farm or rent."

(*b*) As in all other appointments, the terms of the power ought to be used either alone, or jointly with the usual technical words.

as to the copyhold parts of the lands, by virtue of a licence (*a*) or authority for that purpose obtained from the lord or lords, lady or ladies of the manors of which the same copyhold lands are respectively parcel, Hath &c.

Surrender.

V. 1. Hath surrendered and yielded up, remised and released, and also assigned. [*Or*—Hath released, surrendered and yielded up, granted, bargained, sold, assigned, transferred, and set over, and by these presents Doth &c.

Surrender of term briefly introduced into the granting part of the conveyance of the inheritance.

2. In consideration &c., and to the end and intent that the residue now to come and unexpired of and in the said term of &c., created by the said hereinbefore in part recited indenture of the &c., may merge in and be consolidated with the freehold and inheritance therein comprised, and hereinafter granted and released, or intended so to be, the said A. B., at the request and by the direction as well of the said C. D. as of the said E. F., and upon the acceptance of the said G. H. and I. K., testified by their severally being parties to and sealing and delivering these presents, Hath released, surrendered and yielded up, bargained, sold, assigned, transferred, and set over, and by these presents Doth &c.; and the said E. F. Hath granted, bargained, sold, aliened, released, and confirmed, and by these presents Doth &c., unto the said G. H. and I. K. (in their actual possession &c.), and their heirs, All &c.

(*a*) Unless by special custom, a copyholder cannot grant a lease of his copyhold tenement for more than one year, without the licence of the lord of the manor. Vide Vol. I. book iii. chap. iii., and the cases there cited. The power of licensing is not customary, but annexed to the person of the lord in respect of his *estate* in the *manor*. Coke's Copyh. sect. 44, p. 122. Accordingly, it is considered in practice to be perfectly clear, (such at least was the opinion of Mr. Butler and other eminent counsel), that a purchaser of copyhold held by lease under a licence granted by the lord, cannot be compelled to complete his contract without evidence of the lord's title to license the lease; shewing that he was either seised in fee-simple, or was authorized by a special power to grant the licence. There is no method, however, of enforcing the lord to produce his title.

VI. 1. In consideration &c., they the said A. B. and C. D., according to their respective estates and interests, and with the privity, consent, and approbation of the said E. F., testified as aforesaid, [*or*, testified by his executing these presents], Have, and each of them Hath &c., and by these presents Do, and each of them Doth bargain, sell, assign, transfer, and set over unto the said G. H., his executors, administrators, and assigns, All &c.

Assignment with consent of third person.

2. He the said A. B., at the request and by the direction of the said A. B., and upon the nomination and appointment of the said C. D., testified by their severally being parties to and sealing and delivering of these presents, Hath bargained, sold, assigned, transferred, and set over, and by these presents Doth &c., unto the said E. F., his executors, administrators, and assigns, All &c.

In assignment of term by trustee at the request of mortgagor, and on nomination of mortgagee.

VII. Hath given and granted, and by these presents Doth give and grant (*a*) [*Or*—Hath given, granted, bargained, sold, aliened, and confirmed, and by these presents Doth, &c.]

Grant.

VIII. They the said A. B. and C. D., according to their respective estates, rights, and interests, and without prejudice as to the said E. F. to any other security which he hath for the said annuity, and as to the said G. H. and I. K., without prejudice to their right to resort to the other lands and hereditaments or property charged with the said legacies of &c. respectively, for the payment of the same legacies, or to be admitted as creditors, under the said commission of bankrupt, against the said J. G., for the value of the same annuities, Have, and each of them Hath remised, released, acquitted, and quit-claimed, and &c.

In releases of right to legacies and annuities as to particular lands.

IX. And the said A. B. and C. D., at the instance and request of the said E. F., and without prejudice to their said mortgages or other securities, as far as the same relate

Where persons having equitable liens join to discharge the same.

(*a*) As to the operation of the words "give and grant," see Vol. I. book ii. chap. iv.

to or affect or concern any lands and hereditaments other than and except the hereditaments hereby &c., Have, and each of them Hath remised, released, acquitted, and quit-claimed, and by these presents Do &c.

Release of estates from portions, and merger of term created for raising the same, quoad the released estates.

X. The said A. B., at the request and by the direction as well of the said C. D. as of the said E. F., and upon the acceptance of the said G. H., testified by their being parties to and executing these presents, Hath released, surrendered and yielded up, bargained, sold, assigned, transferred, and set over, and by these presents Doth &c., and the said C. D. Hath remised, released, and for ever quit-claimed, and by these presents Doth &c., unto the said G. H., his heirs and assigns, All those the said two undivided third parts or shares (the whole into three equal parts or shares being considered to be divided) of and in all and singular the said lands, hereditaments, and premises hereinbefore particularly mentioned, situated in the said county of M., and which have been contracted to be sold as aforesaid, with their and every of their rights, members, and appurtenances; And all the estate &c.; To the end and intent that the residue and remainder now to come and unexpired of the said term of 1000 years may merge in and be consolidated with the inheritance of the same premises, and that the same may be held and enjoyed freed and discharged of and from the portions directed to be raised under the trusts of the said term.

Release of lands charged with annuity, and of all powers for compelling payment thereof.

XI. He the said A. B. Hath remised, released, acquitted, and for ever discharged, and by these presents Doth remise, release, acquit, and for ever discharge the said C. D., his heirs, executors, administrators, and assigns, and every of them, and the said messuage or tenement, farm, wave or liberty of fishing, hereditaments, and all and singular other the premises charged with the payment of the said annuity or yearly sum of £——, under or by virtue of the said indenture of the &c., and every of them, and every part and parcel thereof, of and from the said annuity or yearly rent-charge of £——, and all future payments thereof; And of and from all powers and remedies for compelling and enforc-

ing the payment thereof; And of and from all securities whatsoever made or entered into for securing the payment thereof; And of and from all actions, suits, causes of action and suit, claims, and demands whatsoever, for or on account of the same annuity or yearly sum, or any security executed or given for the same, or in anywise relating thereto.

Release by way of enlargement.

XII. Have, and each of them Hath granted, bargained, sold, aliened, released, and confirmed, and by these presents Do &c. grant, bargain, sell, alien, release, and confirm unto the said A. B. [in him now actually vested (*a*), *or*, in his actual possession now being by virtue of a bargain and sale to him thereof made by the said C. D., in consideration of 10*s*., by an indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession].

Recital of bargain and sale.

Recital of common law lease.

[*Or*, in his actual possession now being by virtue of a demise to him thereof made by the said C. D., by an indenture bearing date &c., for the term of &c., commencing from &c., and by force of an actual entry made by the said A. B. in or upon the same premises].

Another form.

[*Or*, in his actual possession now being by virtue of a demise to him thereof made by the said mayor and commonalty &c., by an indenture bearing date &c., for the term of one whole year, commencing &c.; and by force of an actual entry made by the said A. B. in or upon such of the same premises as are in the county of &c., and also another entry in or upon such &c., subsequently to the execution of the said indenture of lease, and previously to the execution of these presents (*b*)].

(*a*) Vide Recital Book, pp. 41, 137, 233.

(*b*) In reciting the lease and release say,

"being an indenture of lease in which actual entries were, as to the lands in each county, made before the execution of the indenture of release."

In releases accompanying an appointment.

XIII. And this Indenture further witnesseth, that, for the considerations hereinbefore expressed, and also in consideration of 10*s.* of like lawful money, to the said A. B. well and truly paid by the said C. D. before the execution of these presents, the receipt whereof is hereby acknowledged, the said A. B., by way of further assurance, Hath granted, bargained, sold, released, and also ratified and confirmed, and by these presents Doth &c., unto the said C. D., his heirs and assigns, for ever.

Appointment in conveyances to purchaser.

XIV. Pursuant to, and by force and virtue and in exercise and execution of the [joint] power and authority to them for this purpose given or limited by the said hereinbefore in part recited indenture of the &c., and of every or any other power or authority in anywise enabling them in this behalf, they the said A. B. and C. D. do, by this present deed or writing, by them respectively sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by them the said A. B. and C. D., [jointly] direct, limit, and appoint, that the piece or parcel of land, and other hereditaments hereinafter particularly mentioned, and intended to be hereby granted and released, with their appurtenances, shall henceforth go, remain, and be to the uses hereinafter expressed and declared of or concerning the same.

In an appointment to uses, as to freehold and copyhold lands under a power of sale.

XV. He the said A. B., by virtue and in pursuance and in exercise and execution of the power or authority, powers or authorities, given, limited, or reserved to him in or by virtue or means of the said hereinbefore recited indenture of &c., and also by virtue and in pursuance and in exercise and execution of all and every other power or powers, authority or authorities enabling him in this behalf, and with the consent and approbation of the said C. D., testified as aforesaid, Doth absolutely sell, dispose of, and convey (*a*), and also

(*a*) These expressions ought to be adapted to the terms of the power.

direct, limit, and appoint all and singular the freehold and copyhold messuages or tenements, lands and hereditaments, hereinafter described, and also mentioned to be granted and released, and covenanted to be surrendered, with their and every of their rights, members, and appurtenances, so and in such manner that the said freehold messuages, tenements, lands, and hereditaments may henceforth remain, continue, and be to the uses, upon the trusts, and for the ends, intents, and purposes hereinafter expressed and declared concerning the same respectively, and so and in such manner that the said copyhold lands and hereditaments, with the appurtenances, may remain, continue, and be To the use of the said E. F., his heirs and assigns, for ever.

Under uses to prevent dower, when the legal estate is to be appointed to a mortgagee.

XVI. He the said A. B., as well in exercise of all powers and authorities in anywise enabling him in this behalf, as also in respect of all his estate and interest therein, Hath directed, limited, and appointed, and also granted, bargained, sold, aliened, released, and confirmed, &c.

In an appointment effectuating partition.

XVII. In pursuance and part performance of the said agreement on the part of the said A. B., and in order to effectuate the said partition, and for other the considerations hereinbefore mentioned, and pursuant to and by force and virtue and in exercise and execution of the power and authority to him for this purpose given or limited by the said hereinbefore in part recited will of the said C. D., and of every or any other power or authority in anywise enabling him in this behalf, he the said A. B. doth, by this present deed or writing, with the privity, consent, and approbation of the said E. F. and G. H., testified by their being parties to and sealing and delivering these presents, direct, limit, and appoint, that all that one undivided third part or share (the whole into three equal parts being considered to be divided) over which the said A. B. hath such power as aforesaid, of and in all and singular the messuages, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby released, with their appurtenances, shall henceforth go, remain, and be to the uses &c. (Vide tit. USES.)

In an appointment by a woman in favour of herself and intended husband.

XVIII. Hath limited and appointed, and by these presents Doth &c., that from and immediately after the solemnization of the said intended marriage between the said A. B. and C. D., not only the interest, dividends, and produce of the monies arising or arisen from the sale or sales of the freehold and copyhold messuages, lands, tenements, and hereditaments, in the said will of the said E. F. comprised, and thereby directed to be sold and disposed of, but also all and every the freehold and copyhold messuages, lands, tenements, and hereditaments, hereinbefore mentioned, situate &c., shall, subject and without prejudice &c., stand and be limited, settled, and assured, and remain, continue, and be To the use of the said A. B. and C. D. for and during their respective natural lives, and the life of the survivor of them, according to the true intent and meaning of the power given to the said A. B. by the said recited codicil of the said C. B., her deceased mother.

In appointment, subject to annuities and estates for life, and to joint power of appointment, as far as not exercised.

XIX. Shall henceforth (subject and without prejudice to the said several annual sums or yearly rents of £——, and to the estate for life of the said A. B. in the messuage &c., limited to her for her life as aforesaid, and also to the said joint power of appointment, as far as the same is not actually exercised by these presents, and to the other uses, trusts, powers, and estates contained in the said indenture of release, as far as the same are not inconsistent with the annual sums, or yearly rent-charges, terms, and estates hereby appointed) stand and be limited; And that (subject and without prejudice as aforesaid) the said hereinbefore in part recited indentures of lease and release and surrender respectively, shall respectively operate and enure, &c.;

Appointment of a rent-charge under a power of jointuring.

XX. Doth grant, limit, and appoint unto the said A. B., (in case she shall survive him the said B. B.), and her assigns, for and during the term of her natural life, one annual sum or yearly rent-charge &c. (*a*)

(*a*) As to the execution of powers of jointuring, see Vol. I. book iii. chap. vi.

When the title of the grantor is not known, but the conveyance is taken under a general warranty.

XXI. Hath granted, bargained, sold, released, and confirmed, and by these presents Doth grant, bargain, sell, release, and confirm, and by virtue and in exercise and execution of every power and authority enabling him in this behalf, Doth direct, limit, and appoint unto the said A. B., his heirs and assigns for ever, (in his actual possession &c.), All &c.

Appointment under a power in a settlement which was extended to leaseholds as well as freeholds.

XXII. Direct, limit, and appoint, that all the leasehold messuages &c. hereinafter described, and also assigned or otherwise assured, or declared so to be, and every part thereof, with their appurtenances, shall henceforth, for and during the several residues and remainders of the said several terms of —— years and —— years therein respectively, be continued and remain to or to the use of and in trust for the said A. B., his executors, administrators, and assigns.

Appointment of attornies to deliver seisin.

XXIII. And this Indenture also witnesseth, that for the better execution of these presents the said A. B. Hath made, ordained, constituted, and appointed, and by these presents Doth make, ordain, constitute, and appoint C. D., of &c., and E. F., of &c., or either of them, jointly and severally, his true and lawful attornies and attorney, &c. (Vide tit. POWERS).

Appointment without prejudice to power of revocation, &c.

XXIV. Pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said A. B. by the said hereinbefore in part recited indenture of release and settlement given, limited, or reserved, as hereinbefore is mentioned, and all other powers or authorities enabling him in this behalf, (but subject and without prejudice to the power of conveyance, disposition, revocation, and new appointment by the same indenture given or limited to the said C. D. and E. F. jointly, and now vested in the said C. D. solely, as hereinbefore is mentioned, and to the exercise of the same powers or authorities, and to the uses and estates to be created thereby), He the said A. B. Doth, by this deed or instrument in writing, by him signed, sealed, and delivered, in the presence of and attested by the two

persons whose names are intended to be endorsed hereupon as witnesses to the signing, sealing, and delivering of these presents by the said A. B., direct, limit, and appoint, that in default of issue male of him the said A. B. by the said C., his wife, entitled or inheritable under the limitations contained in the hereinbefore in part recited indenture of settlement to the sons of A. B. by the said C., severally and successively in tail-male, the messuages &c., hereinafter &c., shall be and remain, and the grant, release, and confirmation contained in the said indenture of release and settlement shall, as to the said messuage &c., operate and enure, and the said C. D., his heirs and assigns, shall stand and be seised of the same messuages &c., to the use of the said E. F., his heirs and assigns, for ever, subject to the yearly rents and payments hereinbefore mentioned.

Direction and consent to trustee to convey and appoint.

XXV. And this Indenture further witnesseth, that, for the considerations aforesaid, and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said A. B. by the said hereinbefore in part recited indenture of release and settlement for this purpose given, limited, or reserved, and all other powers and authorities whatsoever enabling him in this behalf, He the said A. B., by this deed or instrument in writing so signed, sealed, and delivered by him, and intended to be attested as aforesaid, Doth request and direct that the said C. D. do and shall, by this present deed or instrument in writing, dispose of and convey, by way of absolute sale, the messuage &c., hereinafter &c., and every of them, and every part thereof, with their appurtenances, To such uses and upon such trusts as are hereinafter contained, subject to the yearly rents and payments hereinafter mentioned, and doth hereby consent and approve, that, for the purpose of effecting such disposition or conveyance as aforesaid, the said C. D. do and shall, by this present deed or instrument in writing, exercise, in manner hereinafter mentioned, the powers of disposition, conveyance, revocation, determination, limitation, and new appointment, by the said indenture of release and settlement given and limited to the

said C. D. and E. F. jointly, and now vested in the said C. D. solely, as hereinafter is mentioned.

Revocation of uses.

XXVI. And this Indenture also witnesseth, that, in consideration &c., by the said G. H. to the said C. D. in hand well and truly paid, at the request and by the direction of the said A. B., testified by his executing these presents, and to be by the said C. D., his executors, administrators, or assigns, applied and disposed of in the manner by the said indenture of release and settlement directed for the application of the money to arise from the sale or sales of such of the said estates in the same indenture comprised as should be sold in pursuance and exercise of the power for that purpose therein contained, the receipt and payment &c.; and pursuant to, and by force and virtue, and in exercise and execution of the power or authority in the said C. D. for this purpose vested by the said hereinbefore recited indenture of release and settlement, and of all other powers or authorities whatsoever in anywise enabling &c., He the said C. D., in compliance with and in consequence of the request and direction, consent and approbation of the said A. B., hereby given and signified, as hereinbefore is mentioned, Doth by this present deed or instrument in writing, by him sealed &c., revoke, determine, and make void all and every the uses, trusts, powers, and provisions in and by the said hereinbefore recited indenture of release and settlement limited, declared, and expressed of or concerning the said messuage &c., hereinafter &c., so far as the same uses, trusts, powers, and provisoes, or any of them, relate to or affect the said messuage &c., or any part thereof.

Appointment by trustee to uses after declared.

XXVII. And this Indenture moreover witnesseth, that, in consideration of the said sum of £——, so by the said G. H. paid as hereinbefore is mentioned, and pursuant to, and by force and virtue, and in exercise and execution of the power or authority in the said C. D. for this purpose vested by the said hereinbefore in part recited indenture of release and settlement, and all other powers and authorities enabling him in this respect, and

in compliance with and in consequence of the request, direction, consent, and approbation of the said A. B., so hereby given and signified as hereinbefore is mentioned, He the said C. D., by this deed &c., so by him signed &c., as hereinbefore expressed, Doth limit, declare, direct, and appoint, that all the messuages &c. hereinafter &c., with their appurtenances, shall from henceforth go, remain, and be, and the said C. D. doth hereby dispose of and convey the same messuages &c. to such uses, and upon such trusts, and for such ends, intents, and purposes as are hereinafter expressed and declared of or concerning the same, subject to the two yearly rent-charges hereinbefore mentioned.

Conveyance by trustee and cestui que trust.

XXVIII. And this Indenture further witnesseth, that, in consideration of the sum of £——, so by the said G. H. paid as hereinbefore is mentioned, and also in consideration of the sum of 10*s.* to the said A. B. &c. and for further assuring the said messuage &c. to the said G. H., his heirs and assigns, to such uses as hereinafter mentioned, He the said C. D., at such request, and by such direction, and with such consent and approbation of the said A. B., and so signified as hereinbefore is mentioned, and according to the estate, right, title, and interest of him the said C. D. in the said messuages &c., and so far as he the said C. D. can or lawfully may, both at law and in equity, and also the said A. B., Have, and each of them Hath granted, bargained, sold, released, and confirmed, and by these presents Do, and each of them Doth grant, bargain, sell, release, and confirm unto the said G. H., (in his actual possession now being &c.), and to his heirs, All &c.

Revocation and new appointment.

XXIX. She the said A. B., by virtue &c., by this deed or writing under her hand and seal, signed, sealed, and delivered or executed by her in the presence of two credible witnesses, and, as to her execution thereof, to be attested by the same witnesses by their severally subscribing their names to a memorandum of attestation indorsed on these pre-

sents (*a*), Doth revoke, determine, and make void all and every of the uses, estates, trusts, powers, and limitations in the said hereinbefore in part recited indenture of release limited and appointed, of and concerning all and every of the freehold messuages &c., situate and being &c., and thereby granted and released, or expressed or intended so to be; And by this her deed or writing so executed by her, and to be attested as aforesaid (*b*), Doth limit, declare, and appoint that immediately after the execution of these presents, All the said freehold messuages, farms, lands, tenements, hereditaments, and premises, situate &c. aforesaid, and by the said indenture of release granted and released as aforesaid, or expressed or intended so to be, shall remain, continue, and be, and that all persons seised and to be seised thereof shall henceforth stand and be seised of the same respectively, and every part and parcel thereof respectively, with the appurtenances, To the use of the said C. D., his executors, administrators, and assigns, for and during and unto the end of the term or time of —— years, to be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste; Nevertheless, upon the trusts, and for the ends, intents, and purposes, and under and subject to the provisions, declarations, and agreements hereinafter expressed, declared, and contained of or concerning the same term; and after the determination of the said term of —— years, in the mean time subject thereto and to the trusts thereof, To such and the same or the like uses, upon such and the same or the like trusts, and for such and the same or the like ends, intents, and purposes,

(*a*) When by trustees under a power to sell and exchange,

"and at the request, and by the direction, and with the consent and approbation of the said (*tenant for life*), testified by this writing under his hand and seal, signed and sealed by him in the presence of two credible witnesses, and to be attested," &c.

(*b*) When as above,

"and at such request, and by such direction, and with such consent and approbation as aforesaid, testified as aforesaid."

and with, under, and subject to such and the same or the like powers, provisions, declarations, and agreements, and particularly the said power of revocation and new appointment, (but subject nevertheless and without prejudice to the said term of —— years, and the trusts thereof), as the same freehold messuages &c. hereby appointed respectively stood limited at the time of the execution of these presents by the said A. B., or would have stood limited in case these presents had not been made or executed.

Revocation of uses, &c.

XXX. By force and virtue and in exercise and execution of the power or authority for this purpose in the said A. B. and C. D. vested by the hereinbefore in part recited indenture, and of all other powers and authorities whatsoever enabling them in that behalf, they the said A. B. and C. D. do, by this present deed or instrument in writing under their hands and seals, revoke, determine, and make void all and every the uses, powers, and provisoes in and by the said hereinbefore in part recited indenture limited, declared, and expressed, and which are now subsisting or capable of taking effect.

Charge of estate with money for payment of debts under a power.

XXXI. In exercise and execution of the power or authority to me for that purpose given by an indenture bearing date the &c., and every other power and authority whatsoever enabling me in this behalf, I, the said A. B., do hereby subject and charge the manors or lordships, and other hereditaments therein comprised, with such sum or sums of money as C. D. of &c., and E. F. of &c., or the survivor of them, or the executors or administrators of such survivor, shall think proper to raise for the payment of the debts now owing, or before the —— day of —— next to be contracted by B. B. my second son, with lawful interest for the same, and with such term or terms of years as they or he shall think proper to create in the same manors or lordships and other hereditaments, or any part thereof, for the purpose of securing the sum or sums of money so to be raised.

Further charge.

XXXII. And this Indenture further witnesseth, that, for the better and more effectually securing to the said A. B.

his executors, administrators, and assigns, the repayment of the said sum of £—— and interest, He the said C. D. Doth, for himself, his heirs, executors, and administrators, and they the said E. F. and G. H. Do, for themselves respectively, and their respective heirs, executors, and administrators, according to their respective rights, estates, and interests, Charge, and make subject and chargeable, All and singular the freehold and copyhold messuages, lands, hereditaments, and premises, particularly mentioned or referred to in and by the within-written Indenture, with their appurtenances, with the payment of the said sum of £—— and interest in manner aforesaid, and according to the true intent and meaning of these presents, and Do, and each and every of them Doth declare and agree with and to the said A. B., his heirs, executors, administrators, and assigns, that the said freehold and copyhold messuages, lands, and hereditaments shall be and remain a security to him the said A. B., his heirs, executors, administrators, and assigns, and stand and be charged and chargeable with the payment to him and them, as well of the said sum of £—— and interest in manner aforesaid, as of the within-mentioned sum of £—— and interest; and that the said freehold and copyhold messuages, lands, and hereditaments, or any part thereof, shall not in anywise be redeemed or redeemable by the said C. D., his heirs, executors, administrators, or assigns, or by the said E. F. and G. H., their heirs, executors, administrators, or assigns, but upon payment by him or them, unto the said A. B., his executors, administrators, and assigns, as well of the said sum of £—— and interest in manner aforesaid, and according to the true intent and meaning of these presents, as of the said sum of £—— and interest, according to the true intent and meaning of the within-written Indenture.

Charge on church rates.

XXXIII. 1. In consideration of the sum of £—— of lawful money of Great Britain, at &c., the receipt of which said sum of £——, in part of the sum authorized to be raised as aforesaid, they the said A. B. and C. D. do hereby acknowledge, and of and from the same &c. they the said A. B. and C. D., in exercise of the said power vested in

them by virtue of the said Acts of Parliament, or either of them, and of every other power enabling them in this behalf, Do hereby Charge and make liable all the church-rates of the said parish of A., and any rates made or to be made in the said parish, under the said Acts of Parliament, or either of them, with and to the payment to the said G. H. and I. K., their executors, administrators, or assigns, of the said sum of £——, with interest for the same at and after the rate of £—— per cent. per annum, in the meantime and until the said principal sum of £—— shall be repaid, such interest to be paid by equal half-yearly payments on the &c., in each year, free from all deductions and abatements whatsoever, and the first payment thereof to be made on the &c. next ensuing the date of these presents.

Grant of church rates until payment of mortgage and interest.

2. And the said A. B. and C. D. Do, and each of them Doth grant and assign unto the said G. H. and I. K., their executors, administrators, and assigns, all the said rates hereby charged as aforesaid, to be had and holden by them, the said G. H. and I. K., their executors, administrators, and assigns, from this —— day of ——, until the said sum of £——, and the interest thereof, at the rate aforesaid, shall be fully paid and satisfied.

Grant of all powers given to churchwardens for raising rates.

3. And the said A. B. and C. D. Do, and each of them Doth grant unto the said G. H. and I. K., and each of them, their and each of their executors, administrators, and assigns, all such powers of receiving and collecting the rates hereby charged, and granted and assigned as aforesaid, and every part thereof, for the repayment of the said sum of £——, and the interest thereof, or of any part thereof, as are by the said recited Acts of Parliament, or either of them, given to churchwardens for the purpose of raising, levying, and collecting the rates made under the powers of the said Acts, or either of them.

In a conveyance by trustees in pursuance of trusts.

XXXIV. They the said A. B. and C. D., in pursuance and execution of the trusts reposed in them in or by the hereinbefore in part recited last will and testament of the said A. B., and of all other trusts or authorities in anywise enabling them in this behalf, Have, and each of them Hath bargained, sold, and released, &c.

In a conveyance in pursuance of a decree for partition.

XXXV. In pursuance of the said hereinbefore recited decree or decretal order, and in obedience thereto, and for carrying the said partition into effect, the said A. B. Hath &c.

In a conveyance in pursuance of an enabling act.

XXXVI. They the said rector and churchwardens of the parish of A. aforesaid, by virtue and in exercise and execution of the power or authority, powers or authorities, given to them in or by virtue or means of the said Act of Parliament, and of all other powers enabling them in that behalf, Have &c.

Dissolution of co-partnership.

XXXVII. They the said A. B. and C. D., with the mutual consent and assent of each other, Have determined and dissolved, and by these presents Do determine and dissolve the said copartnership and joint trade, and the said indenture of copartnership, and every clause, article, matter, and thing therein contained, and do hereby declare and agree that the same shall henceforth cease and determine.

TITLE III.

OF PARCELS (*a*).

In grant of annuity.

I. ONE annuity, or clear yearly rent charge or sum of £—— of lawful money of Great Britain, to be paid and payable, during the term of —— years, if the said A. B. shall so long live, and to be charged and chargeable upon, and yearly issuing and payable, and to be had, received, and taken from and out of all and singular the messuages and other the hereditaments hereinafter particularly mentioned, and intended to be hereby demised, and from and out of every part and parcel thereof.

Assignment of annuity—powers of distress and entry—warrant of attorney and judgment.

II. The said annuity or yearly sum of £——, and the powers of distress and entry, and all other powers, covenants, and remedies whatsoever in the said A. B. vested, or to him granted for compelling and enforcing the payment thereof, and the warrant of attorney, and the judgment entered up in pursuance thereof, and the full benefit and advantage of the same respectively; and all sum and sums of money recover-

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Practical rules.

(*a*) On the subject of Parcels, see Vol. I. book ii. chap. v. The ensuing rules, there laid down, ought to be strictly observed:—

"1st, That the description of the lands should effectually ascertain their locality and boundaries.

"2ndly, That the words in which the parcels are described should completely comprehend them, and convey them to the purchaser.

"3rdly, That in all cases where it can be done, the specification of the lands should connect the description used in the actual deed of purchase with that in the more ancient instruments, and thereby afford evidence of the identity of the lands throughout the title.

"4thly, That it is the province of the purchaser to prepare the purchase-deed, and consequently his right (under the above restrictions) to frame the language of the description.

"And, 5thly, That the vendor cannot support any objection to the description, unless he can shew it to be vague, inapplicable, or too extensive."

able thereby, and all the right, title, and interest of him, the said A. B., of, in, and to the same premises, and every of them, and every part thereof respectively.

III. All that the advowson, donation, free disposition, perpetual patronage, and right of presentation of, in, and to the said rectory and parish church of A., in the county of C.; together with the parsonage house, and outhouses thereto belonging, with all other houses, edifices, glebe, lands, meadows, pastures, commons, tithes of what kind soever, fruits, oblations, obventions, pensions, portions, and all other commodities, advantages, emoluments, hereditaments, and appurtenances whatsoever to the same rectory or perpetual advowson belonging, or in anywise appertaining, or accepted, reputed, deemed, taken, or known as part, parcel, or member of the same, or any part thereof, all which said glebe, lands, and hereditaments hereinbefore granted and released are now in the actual possession of the said A. B., by virtue of a bargain and sale to him thereof made by the said C. D., in consideration of 5*s.* &c.; And the reversion &c.; And all the estate &c.

Advowson.

General words.

IV. All that one undivided moiety or half part or share, or one equal moiety or half part or share, (the whole into two equal moieties or half parts or shares to be divided), of and in All &c.; And also of and in all and singular the lands and other hereditaments and rights which in or by virtue or in pursuance of the said hereinbefore in part recited Act of Parliament have already been, or shall at any time hereafter be allotted, awarded, or given to the owner of the said messuages, lands, and other hereditaments, or any of them, in respect thereof, or otherwise howsoever, and the full benefit of the said Act of Parliament.

Undivided moiety and allotments in lieu of common right under inclosure act.

V. All and every the said manors or lordships, or reputed manors or lordships, capital messuage, messuages, farms, lands, tenements, mills, tithes, rents, hereditaments, and all and singular other the premises whatsoever, mentioned and comprised in the first recited indentures of lease and release of the &c., and in the said term of &c., created by

In assignment so as to include allotted lands.

the said recited will of A. B., deceased, as aforesaid; And also all such allotments, lands, and hereditaments as have been allotted or received upon any partition, division, inclosure, or exchange, in lieu of or in exchange for the same hereditaments, or any part or parts thereof, or any rights of common annexed thereto, with their and every of their rights, members, and appurtenances.

In assignment of bond.

VI. The said hereinbefore in part recited bond or obligation, executed by the said A. B. as aforesaid, and all and every the sum and sums of money secured or intended to be secured, or which can be recovered and received upon and by virtue of the said bond or obligation; And all the right, title, interest, trust, property, benefit, advantage, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said C. D., of, in, to, or out of the same bond, monies, and premises, or any part thereof.

All right, &c.

In assignment of turnpike bond.

VII. All that the said principal sum of money due upon or in respect of the said hereinbefore in part recited turnpike bond or instrument in writing, and all interest now due or hereafter to grow due in respect thereof, and also the said bond or instrument in writing, and all and singular the powers and remedies given to or vested in the said A. B. and C. D., for securing and compelling payment of the money and premises aforesaid, or any of them, or any part or parts thereof respectively; And all the right &c. (Vide Art. VI.)

In assignment of bonds, promissory notes, and bills of exchange, and the money due thereon.

VIII. All those several bonds or obligations, promissory notes and bills of exchange, and other instruments, which are enumerated and described in the schedule thereof hereunder written or hereunto annexed; And all and every sum and sums of money due and to become due to the said A. B., either for principal monies or interest, or otherwise howsoever, under or by virtue of the said several bonds, obligations, notes, bills of exchange, and securities, and every of them; And also all benefit and advantage of the same money and securities respectively; And all right &c. (Vide Art. VI.)

In release of claims by next of kin to administrator.

IX. All and all manner of actions and suits, and causes of actions and suits, both at law and in equity, whatsoever, against the said A. B., which they the said C. D. &c., or any of them, their or any of their heirs, executors, and administrators, or any other person or persons by, from, under, or in trust for them or any of them, or on their or any of their account, or by or through their or any of their means, can, shall, or otherwise might have, claim, challenge, or demand, for or by reason or means or on account of the goods, chattels, and effects of the said B. B., deceased, or the payment, application, or disposition of the same, or any part thereof, or any act, deed, matter, or thing relative thereto.

Coal mines in conveyance to purchaser.

X. All and singular the mines, veins, beds, and delphs of coal whatsoever of him the said A. B. now open or to be opened, situate, lying, growing, or being within or under all or any of the lands, grounds, tenements, or hereditaments lying and being within the liberty of C. and D., in the parish of E., in the county of D., formerly the estate and property of S. H., esquire, deceased, afterwards the estate and inheritance of I. F., esquire, deceased, (other than and except the coals being within and under all or any of the messuages, buildings, orchards, and gardens, which were standing and being upon any of the said lands, tenements, and hereditaments, at the time of making and executing a certain grant, bearing date on or about &c., whereby the said coals were granted and assured by the said G. H. to and to the use of P. L. of &c., and his heirs), together with liberty of ingress, egress, and regress, with agents and servants, into the said premises, in places convenient for the soughing and digging for the said coals, and for the stacking of the same in places near where the same shall be got until they may be conveniently sold and carried away off and from the said premises, and all rights, powers, liberties, privileges, hereditaments, and appurtenances whatsoever of him the said A. B. to the said mines, veins, beds, and delphs of coal belonging, or in any wise appertaining, and therewith used, occupied, and enjoyed, or accepted, reputed, taken, or known as part, parcel, or member thereof, or as incident and belonging thereto.

Another form.

XI. All the coals, coal mines, collieries, veins, and seams of coal, and all other mines and minerals whatsoever, now opened, found out, or known, or which shall or may be hereafter opened, found out, or obtained by digging, boring, sinking, levelling, or otherwise howsoever, within or under all or any of the lands, grounds, closes, inclosures, or parcels of arable, pasture, and meadow ground of him the said A. B., called or known by the several name or names of &c., situate &c.; And all the pits, shafts, groves, stems, and levels now open, and which have been wrought in and upon any of the said lands, tenements, grounds, and premises, with full and free liberty to and for the said C. D., his heirs and assigns, to bore, sink pits and shafts, drive levels and races, erect and make engine or engines, with pumps, dams, and watercourses necessary for the same, to turn and divert the stream or streams of water now used to the water corn mill of the said A. B., or any other stream or streams of water within the said lands, tenements, or grounds, to such engine or engines, and to erect and make necessary huts, hovels, banks, steaths, and other conveniences for the searching out, having, obtaining, and taking up of coal and other mines and minerals, and for the avoiding, conveying, draining, and carrying away the water out of the said coal mines and collieries and other mines, and also for the steathing, laying, placing, and disposing, as well of all the coals and other mines as of the refuse and rubbish arising from and by such boring, levelling, sinking for, and obtaining of coal or other mines; And also full and free liberty to make all such necessary and convenient way or ways in and through the said lands and premises as the said C. D., his heirs or assigns, shall think proper for the convenient carriage of coals or other mines and necessaries, and the workmen going and returning to and from the said coal pits or other pits and works to be there wrought for that purpose, and to dig, quarry, get, take, remove, and carry away all such stones, soil, sand, gravel, and clay at any place or places within the said lands, tenements, grounds, and premises, as he or they shall think proper or have occasion to use for the making or repairing of such way or ways, or for erecting of engine or engines, diverting of

watercourses, or any other purpose in working of the said collieries or other mines, and all other liberties necessary and convenient for the purposes aforesaid, and for the searching for, discovering, winning, working, getting and carrying away the coals and other mines hereby granted, or any other coals or mines which he the said C. D., his heirs or assigns, hath, or shall or may have, obtain, or get in any lands or grounds thereto adjoining.

Coal mines, &c. in a lease recited. (Special form.)

XII. All those collieries and coal mines, and all those strata, beds, veins, or seams of coal, kannel, culm, or slack; And also all mines, veins, beds, and quarries of clay, sand, gravel, limestone, and ironstone, and all minerals, fossils, and valuable and profitable articles, matters, and things of every and any kind whatsoever, that could be procured, extracted, or produced from and under the soil and surface of the earth, lying and being or thereafter to lie within, upon, or under, and which should thereafter be found, won, wrought, or gotten in, from, within, upon, out of, or under all those several lands and grounds of the said A. B., situate, lying, and being at, in, or near A. and P., within or near unto the liberty of &c., in the parish of &c., in the said county of &c., now or late in the several tenures or occupations of &c., and their respective assigns or undertenants; And also all pits then sunk down in any part or parts of the said lands and grounds, and all gins, engines, buildings, and erections therein, or thereupon erected, situate, standing, or being, together with full and free liberty, power, and authority to and for the said C. D., his executors, administrators, and assigns, his and their agents, servants, colliers, viewers, miners, and workmen, to enter into the said lands and grounds, and every or any part thereof, at his and their free will and pleasure, for the purpose of working the same, and to work the pits already open, and to bore, dig, delve, and break up the soil, and to make, sink, and drive any new pits, shafts, canals, tunnels, sloughs, levels, gutters, crests, and drains, for winning, working, raising, getting, and procuring all such coal, kannel, culm or slack, gravel, sand, clay, limestone and ironstone, and all such minerals, fossils, and matters as should or might be found within, upon, or under the said

lands or grounds, or any part or parts thereof: And for the better working the said mines to use all roads, ways, paths, and passages, and to make roads, ways, paths, and passages, and all convenient and necessary canals, basins, wharfs, quays, bridges, erections, buildings, glass-houses, smelting houses, forges, furnaces, and works for the better working of the said mines, washing or smelting the said ironstone, burning of the said limestone, converting the said coal into coke, making of glass, bricks, and tiles, and, as far as the said A. B. lawfully can or may, for the shifting, changing, altering, repairing, amending, pulling down, or removing of the whole of the said erections, buildings, and materials, erected, built, or made, and to be made or built, by the said W. P. and B. P., their executors, administrators, or assigns, from and off the said lands and grounds, as to the said —— and ——, their executors, administrators, and assigns, should from time to time appear just and reasonable, during the continuance of this said lease now in recital; And also with full and free liberty, power, and authority, so far as the said A. B. has the liberty to lease the same, to make, lay, and place, and to enjoy and use in, through, upon, and over the said lands and grounds, or any part or parts thereof, canals, basins, railways, waggon ways, by-ways, and side ways, and all other way-leaves which the said A. B. was enabled and empowered exclusively to lease in, through, over, and along the said lands and grounds, the fetching and carrying the said coal, kannel, culm, slack, gravel, clay, limestone, ironstone, minerals, and fossils, and for the better use and enjoyment of the premises hereby let in manner aforesaid: Saving and reserving to the said A. B., and his tenants and assigns, and to the person and persons who for the time being should be entitled to the rents, reservations, or royalties thereby reserved, and his and their agents, stewards, bailiffs, workmen, servants, and labourers, uninterrupted right of way and passage across, through, over, and along the said ways, roads, paths, and passages already made and opened, and which should at any time hereafter, during the continuance of the said term thereby demised, be made or opened, at all times, at their free will and pleasure; And together also with full and free liberty, power, and authority to and for the said W. P. and B. P., their executors,

administrators, and assigns, to make and erect all convenient and necessary buildings, workshops, workmen's houses, cabins, hovels, sheds, stables, smith's shops, furnaces, forges, kilns, engines, bridges, quays, wharfs, and all other erections, matters, and things which should in the judgment of the said W. P. and B. P., their executors, administrators, or assigns, be proper, conducive, or necessary for working and winning the said mines and minerals, laying, placing, stacking, stowing, and exposing the said materials, and converting, manufacturing, selling, and disposing of the same to the greatest advantage; And also to amend, repair, change, alter, shift, take down, and remove the same from time to time as to them should seem meet and reasonable, and with the like full and free liberty, power, and authority for the said W. P. and B. P., their executors, administrators, and assigns, to lay, place, stack, stow, and expose to view and sale the said coals, kannel, culm, slack, limestone, ironstone, clay, sand, gravel, bricks, tiles, and other materials, upon any part of the said lands and grounds, and the same there also to burn, manufacture, and convert in whatever manner to him and them should appear reasonable and proper, with full, free, and uncontrouled access, regress, and commonancy to, from, in, upon, or under the said lands and grounds, for and by the agents, workmen, labourers, servants, horses and other beasts or cattle, waggons, carts and other carriages, with all tools, engines, machines, and materials proper or necessary for carrying on the said works, and for converting and disposing of the produce of the said mines as aforesaid, without any let, trouble, hindrance, molestation, or interruption of the said A. B., or the person or persons to be entitled to the reversion of the premises thereby demised, or intended so to be, for and during the said term of twenty-one years as aforesaid, they the said W. P. and B. P., their executors, administrators, and assigns, doing or causing as little damage as may be to the surface of the said lands and grounds, and making full and reasonable satisfaction to the present and all future tenants of the same for whatsoever loss, injury, or damage they or any of them should or might have borne, suffered, or sustained by or from the boring, searching, and digging

for coal, limestone, ironstone, gravel, sand, clay, or any other of the aforesaid materials, or sinking, working, or winning the said pits and mines and minerals thereby demised, or making lime, bricks, tiles, or glass, or raising, placing, stacking, stowing, and exposing for view and sale the said coal, coke, ironstone, bricks, tiles, clay, or any of the matters aforesaid, on the surface of the said lands and grounds, making and driving canals, tunnels, sloughs, levels, or drains, or making roads, railways, waggon-ways, by-ways, paths, and pathways, erecting buildings, or planting any houses, offices, walls, forges, furnaces, wharfs, quays, bridges, or engines, or making, causing, or doing any trespass, encroachment, or other matter or thing which should be prejudicial, hurtful, or injurious to the said tenants, or any of them, at any time during the said term of twenty-one years thereby demised; the amount of such damages to be from time to time fixed and ascertained by two indifferent persons, one to be named by the respective tenants, and the other of them by the said parties thereto of the second part, their executors, administrators, or assigns; and if such two persons so to be named should disagree, then such damage to be fixed and ascertained by a third person, or be named by such two persons; such damage or proportion to be paid within six calendar months after any such damage should have happened respectively.

In a deed of confirmation.

XIII. All such part or share (*a*), parts or shares (if any), of her the said C. D. of and in all &c., mentioned and described in the within-written Indenture, as was or were intended (*b*) to be thereby conveyed and assured, unto and to the use of the said A. B., his heirs and assigns, and

(*a*) A former vendor, seised either of one-third or of two-thirds of one third, conveyed, by the description of "all that her full third part or share" &c., without the usual words "or other part" &c. It not being ascertained whether she had an entire third or not, in a deed of confirmation, to obviate the doubt whether the two-thirds of one-third passed by the description of a full third, the parcels were as above.

(*b*) The deed had previously recited, that it was the intention of the parties to the original conveyance, that the said one-third part or share, or as the case should happen, two-thirds of one third part or share, should be thereby conveyed and assured.

was or were not effectually conveyed and assured to him and them by the said Indenture.

Part freehold, and part customary freehold, passing by surrender.

XIV. All such and so many and such parts of all that farm, and those messuages or tenements, lands and hereditaments, situate at &c., in the county of &c., now or late in the possession or occupation of &c., his under-tenants or assigns, at the yearly rent of &c., as are of freehold tenure and may be [customary *or* copyhold tenure and may not be] lawfully and rightfully conveyed by indentures of lease and release, which said freehold [customary *or* copyhold] lands do consist, or are supposed to consist of the several parts or parcels hereinafter mentioned, (that is to say), All &c.

Part freehold and part copyhold.

XV. And also so much and such part, if any, of and in the other closes, pieces, or parcels of land purchased by the said A. B. as aforesaid, and hereinbefore described, as are of copyhold tenure, with their respective rights, members, and appurtenances, (being all or part of the copyhold lands and hereditaments to which the said C. D. was admitted at a court held for the said manor of B., on the &c., and being part of the lands the ground plot whereof is set forth or delineated in the said map or plan drawn in the margin of these presents); And also all and singular and such and so many and such parts &c., as are held for an estate of freehold and inheritance of and in all &c. (*a*).

Shares of copartnership effects.

XVI. All the three-seventh parts, shares, and proportions of him the said A. B. of and in all and singular the goods, wares, merchandizes, stock in trade, debts, effects, matters, and things belonging, due, and owing to the said A. B. and C. D., as copartners or joint-traders, or in respect of their said copartnership or joint-trade, other than and except the several debts particularly specified in the said schedule hereunto annexed; and all the right, title, interest, property, claim, and demand whatsoever of the said A. B. of, in, or to the said several premises, other than and except as aforesaid.

(*a*) Vide Vol. I. book ii. chap. v.

In an assignment of copyright.

XVII. The copyright of all that book or publication in four volumes, entitled &c., and all right, title, and interest in and to the same book or publication; And also all such parts as are already printed, and such parts thereof as from time to time shall be printed, as far as the said A. B. is interested in the same, and also the money which from time to time shall become payable to him for the said copyright or for the said books.

Debt and dividend, &c.

XVIII. The debt or sum of £——, and the dividends and sums of money to arise from and be received thereon, under the fiat of bankruptcy mentioned in the said indenture indorsed on the within-written Indenture, or otherwise, and all benefit and advantage thereof; And also all those several sums of &c., and the promissory note, lease, bill of sale, and securities mentioned in the said indenture as aforesaid.

In release of dower.

XIX. All the dower and thirds, and right and title of dower and thirds at the common law, or otherwise, which she the said A. B. hath, or can, or may, or otherwise might have, claim, challenge, or demand of, in, to, or out of all and singular the manors, capital and other messuages, lands, woods, underwoods, hereditaments, and real estate, late of or belonging to the said C. B., deceased, situate, lying, and being in the county of D., and of, into, and out of the rights, members, and appurtenances thereto belonging; And all the estate &c.

Real and personal estate in a conveyance by trustee.

XX. All and singular the messuages, lands, tenements, and hereditaments, real and leasehold estates whatsoever and wheresoever, and of what nature or kind soever, and all and singular the goods, wares, merchandizes, stock in trade, book and other debts, sum and sums of money, mortgages, bonds, bills, notes and other securities for money, credits, balances, effects, and things, and all and singular other the real and personal estate of or to which the said A. B. became seised, possessed of, or entitled to, under the said hereinbefore recited will and codicil of the said testator, upon trust as aforesaid, in possession or by way of future or contingent interest, or otherwise howsoever, with all and singular the

rights, members, and appurtenances thereunto belonging, or in anywise appertaining; And the reversion &c.; And all the estate &c.

In release by exchanging parties of right of re-entry and benefit of warranty, &c.

XXI. All right of re-entry by him the said A. B., his heirs, appointees, and assigns, into and upon the manor and other hereditaments comprised in the first schedule to the said indenture of &c., and every or any part thereof, by force of the condition incident at law to exchanges, or of the special power of re-entry by the said indenture given to him the said A. B., his heirs, appointees, and assigns, in case of eviction, and all right of action, and all warranty and benefit of warranty incident at law to the said exchange, or given or created by the said indenture of &c., (save and except under and by virtue of the express covenants for the title to the said last-mentioned manor and other hereditaments, which by the said indenture were entered into by the said C. D. with the said A. B., his heirs, appointees, and assigns).

Freehold and copyhold described in schedule.

XXII. 1. All and singular such of the said messuages, lands, tenements, and hereditaments, of the nature of freehold and not of copyhold, as are described and comprised in the schedule hereunder written or hereunto annexed, (save and except such of the freehold messuages, lands, tenements, and hereditaments therein comprised as in and by the said hereinbefore in part recited will of the said A. B. were devised to the children of the said C. B., father of the said A. B., party hereto, and C. D., as tenants in common in tail).

2. All such of the messuages, lands, tenements, and other hereditaments described and comprised in the schedule hereunder written or hereunto annexed as are of copyhold or customary tenure.

In assignment of fixtures.

XXIII. All the fixtures, chattels, and articles of personal property whatsoever now in or about the said messuage &c., hereby assigned or otherwise assured, or intended so to be, which are enumerated or specified in the schedule thereof hereunder written or hereunto annexed; And all the right &c. (Vide Art. VI.)

In a conveyance of lands inclosed by agreement.

XXIV. And all such and so many &c., conveyed &c, as upon the said inclosure or allotment were allotted to any other person or persons; Subject nevertheless and without prejudice to the estate, rights, and interests of the person or persons to or for whom or whose use and benefit such allotments were made, on his or their continuing to abide by and perform the said agreement and award, and to carry the same into effect (*a*).

Land-tax.

XXV. All and every sum and sums of money, and interest to become due, as the share or proportion payable in respect of the said redeemed land-tax of &c. of and in the said sum of £—— 3 per cent. Consolidated Bank Annuities, and interest, which became charged upon the several messuages and hereditaments, the land-tax whereon was so redeemed as hereinbefore is recited; Together with the full benefit of the said charges, and all other powers and remedies for raising or securing the same sum and interest, so far as the said A. B., C. D., and E. F., or any of them, is or are interested in or entitled thereto (*b*).

(*a*) In the Habendum :—

"subject and without prejudice to the said agreement or award for the said inclosure, and the allotment made under the same."

With reference to the transaction to which the above Form relates, the following opinion was expressed by the eminent counsel who prepared the draft:—" As to the lands taken under the inclosure, the title is merely *equitable*, with a prospect as a matter of course of having the inclosure (should an attempt be made to disturb it, or should it on any other account be deemed expedient,) confirmed by Parliament, as was done in the case of the Netherseal and Overseal inclosure under a bill I prepared in 39 Geo. III. But as an equitable title of this description is not strictly marketable, the purchasers must consider with themselves whether any objection arises in their minds on this account. At all events, if they accept the title, they should take a conveyance of the allotted lands, and of the lands taken from the estate, (subject to the allotment), that they may be competent in point of estate to give effect to any arrangement by conveyance for carrying the intended provision into legal effect."

(*b*) The above parcels occurred in an assignment of the benefit of the charge arising under the old Land-tax Redemption Act, (38 Geo. 3.

XXVI. All that the aforesaid tenement, with the appurtenants, commonly called or known by the name of &c., situate, lying, and being within the aforesaid parish of &c., and lately in the possession of &c., his under-tenant or under-tenants, afterwards of &c., deceased, his under-tenant or under-tenants, and now in the possession of the said &c., and being part or parcel of the manor of &c.; And all and singular other the premises demised with the said tenement by the said hereinbefore in part recited indenture of lease or demise as belonging thereto, (except as in the said indenture of lease of the same premises is mentioned to be excepted); And all the right, title, interest, term and terms for years, property, possession, benefit, equity of redemption, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said A. B., of, in, to, or out of the said tenement and premises, with the appurtenants, under or by virtue of the said hereinbefore in part recited indenture of lease, together with the hereinbefore in part recited indenture of lease and demise; And also all deeds, papers, writings, and evidences whatsoever relating to or in anywise touching or concerning such part only of the lands and property of the said A. B. as is hereby bargained, sold, and assigned or otherwise assured, or intended so to be, which are now in the custody, possession, or power of the said A. B., or which he can or may procure or obtain without suit at law or in equity.

As described in the assignment of a lease of part of a manor.

All right, &c.

All deeds, &c.

XXVII. 1. All those the said pieces or parcels of ground, messuage or tenement, coach-house, erections, buildings, and all other the premises which were respectively demised by the said two several hereinbefore recited indentures of lease, bearing date respectively &c., and afterwards assigned by the said A. B., by the said hereinbefore in part recited indenture of assignment or settlement, bearing date &c., with their and every of their appurtenants; And all the estate &c.

In an assignment of leaseholds.

c. 60), where a lessee under a beneficial church lease had redeemed the tax, without declaring his option to be considered as a purchaser. The land-tax on several tenements had been redeemed together, and one gross sum in Consols paid for the whole. The above was contained in the assignment of the lease of one of these tenements.

2. All those &c. which were demised by &c., which said messuage or tenement hereby assigned is numbered ——, on the east side of —— street aforesaid, and is now or was lately in the tenure or occupation of &c.

In an assignment by a trustee under a deed of partition, and by the executor of a surviving trustee in a marriage settlement of their several estates and interests in certain leaseholds to the beneficial owner.

XXVIII. All &c.; And all and singular other the premises comprised in and demised by the said several in part recited indentures of lease, or such or so much and so many of them as was or were by the said in part recited indenture or deed of partition assigned to or vested in the said A. B., in trust as aforesaid, and whereof or wherein the equitable or beneficial interest was afterwards assigned to the said C. D. and E. F., their executors, administrators, and assigns, previous to the marriage of the said G. H. with the said I. K. as aforesaid, with their and every of their rights, members, and appurtenants.

License to use patent.

XXIX. Grant and confirm unto the said A. B. and C. D., their executors, administrators, and assigns, or other the person or persons for the time being carrying on the trade or business now carried on by the said A. B. and C. D., either at the said mills or factory of &c. aforesaid, or any other mill or mills, factory or factories, wheresoever the said trade or business may for the time being be carried on; And also to and for their and his agents, manufacturers, workmen, and others employed by them or him, full and free liberty, license, power, and authority to make, use, and exercise the said spindles for throwing organzine, so invented by the said E. F. as aforesaid, in any number they, the said A. B. and C. D., their executors, administrators, and assigns, or other person or persons for the time being carrying on the said trade or business now carried on as aforesaid, not exceeding at any one time the number of —— spindles; the same to be used in or about the said mill or factory at &c. aforesaid, or other the mill or mills, factory or factories, where the said trade or business shall for the time be carried on, without any molestation or interference by the said E. F., his executors, administrators, or assigns, or being obliged to account in any manner to the said E. F., his executors, administrators, or assigns, or any of them, in respect thereof.

XXX. All that one equal undivided ninth part or share, the whole into nine equal parts or shares to be divided, of and in the manor, messuages, lands, tenements, and other hereditaments, mentioned and comprised in the first schedule hereunder written or hereunto annexed, and of and in all veins and seams of coal, mines, minerals, and quarries in, under, or upon the same, or any part thereof; And also all that one equal undivided third part or share, the whole into three equal parts or shares to be divided, of and in the several messuages, lands, tenements, and other hereditaments mentioned and comprised in the second schedule hereunder written or hereunto annexed; And of and in all veins and seams of coal, mines, minerals, and quarries in, under, or upon the same, or any part thereof, (subject however to the life estate of the said A. B. in such of the last-mentioned messuages, tenements, lands, and hereditaments as in the said second schedule are mentioned to be subject thereto), Shall, together with their and every of their respective rights, members, and appurtenants, go, remain, and be, and that the said hereinbefore in part recited indenture of release of the &c., and the lease for a year upon which the same is grounded, and all the conveyances and assurances of the same manor, messuages, lands, tenements, hereditaments, and premises, and every part and parcel thereof, shall operate, and that the said B. B. and C. C., and their heirs, shall stand and be possessed of and interested in the same premises, and every part and parcel thereof, To the use of the said A. B., his executors, administrators, and assigns, henceforth, for and during and until the full end and determination of —— years, without impeachment of or for any manner of waste; Subject nevertheless to a proviso or condition hereinafter contained for making void the same term in manner hereinafter mentioned. [Vide tit. PROVISOES AND DECLARATIONS.]

Undivided parts of manor, mines, &c., described in schedules (in an appointment).

XXXI. The said sum of £——, and also all and every or any sum or sums of money which shall become due and payable to him the said A. B., under or by virtue of the trust of the said recited indenture of release of the &c., for principal, interest, and costs, and otherwise; And also all and every sum and sums of money now due and to become due to him as his

In an assignment of money due under an indenture of trust, under a decree in Chancery.

share or proportion of the said purchase money under the said recited articles of agreement, or under or by virtue of any decree, order, or direction made or pronounced in the said cause in the Court of Chancery, and all interest, proceeds, and accumulations, if any, of the said respective sums of money and premises, and all costs which shall be payable to him the said A. B. under the decree in the said Court made or to be made in the said cause; And also all the right &c.

Money under an appointment.

XXXII. The said sum of £——, and also all and every other sum or sums of money which shall become due and payable to him the said A. B. under or by virtue of the appointments made to him by the said hereinbefore in part recited indenture, bearing date &c.; And also all and every other sum and sums of money which he the said A. B. shall at any time or times, and from time to time, be entitled to receive as and for a further part or share of the said sum of £——, under and by virtue of the said hereinbefore in part recited indenture of the &c., and the trusts thereby declared, either for the want of an appointment, or under any further or other appointment in his favour, of any further or other part of the said sum of £——, or by survivorship, accruer, or otherwise, and all interest to become due for the same sum and sums of money respectively; And all the right &c.

In assignment of surplus money arising from sale by first mortgagee to second mortgagee.

XXXIII. All and every the sum and sums of money which, in case of any sale or sales by the said A. B., his heirs or assigns, under or by virtue of the trusts contained in the said hereinbefore in part recited indentures of lease and release of the &c., shall, after the full payment of the principal money and interest and costs thereby secured or intended to be secured, remain in the hands of the said A. B., his executors, administrators, and assigns; And all right, title, interest, possibility, claim, and demand whatsoever, both at law and in equity, of him the said C. D., his heirs, executors, administrators, and assigns, of, in, or to the said premises, with full power to ask, sue for, recover, and receive, and to give effectual receipts and discharges for the said sum and sums of money, and other the premises

Short form of power of attorney.

hereinbefore assigned, and every part thereof respectively, in the name of the said C. D. or E. F., or either of them.

XXXIV. All that newspaper or journal, called or known by the name of the &c., and the presses, types, and materials from time to time used for printing the said paper, and all the gains, profits, and advantages from time to time arising by the publication and sale thereof, and by the advertisements, letters, and paragraphs inserted therein, or by any other matter or thing, ways and means whatsoever; And also the good-will of the said newspaper; And all the right, title, interest, property, claim, and demand whatsoever of the said A. B. in and to the said newspaper and premises. Newspaper.

XXXV. The said silver ticket of admission into the said Opera-house Theatre, and every part thereof, and to the said concerts, (except as hereinafter is excepted); And also the licences, liberties, and privileges given or granted to the said A. B., his executors, administrators, and assigns, and the bearers of the said ticket, in or by the said hereinbefore in part recited indenture; And all the right in and to the said silver ticket, and the said liberties, licences, and privileges, and every of them; And also all and singular the covenants and agreements entered into by the said C. D. in or by the said hereinbefore in part recited indenture; And all and every sum and sums of money, costs, and damages, if any, which can, shall, or may be recovered under or by virtue of the said covenants, and the full benefit of the same. In an assignment of an opera ticket.

XXXVI. All that instrument or policy of insurance (*a*), No. ——, bearing date the ——, whereby the said messuage or tenement is insured in the —— Insurance Office, from and against loss or damage by fire, for the term of —— years from the date of the said instrument or policy; And Policy of insurance.

(*a*) For forms of policies of insurance, both against fire and for lives, see M'Culloch's Commercial Dictionary, art. Insurance, pp. 705, 711, 2nd edit.

all and every sum and sums of money, benefit and advantage whatsoever, to be had, received, gotten, or taken by virtue thereof; And all the right &c.

Policy of assurance.

XXXVII. All that instrument or policy of assurance of the —— Assurance Company, No. ——, bearing date &c., whereby the life of the said A. B. is insured in the sum of £——, and the said sum of £——, thereby assured and made payable as aforesaid, or intended so to be; And all bonuses, and other sum and sums of money, benefit, and advantage whatsoever, to be received by virtue thereof; And all the right &c.

Another form, with short form of power of attorney.

XXXVIII. All that the aforesaid policy or instrument of insurance, bearing date the &c., marked ——, and numbered ——; And all and every sum and sums of money, benefit, and advantage whatever to be had, received, or taken by virtue of the same policy, with full power and authority for the said C. D., his executors, administrators, and assigns, to act as the attorney and attornies for, and to use the name of the said A. B., his executors, administrators, and assigns, in compelling payment of or giving effectual receipts for the same; And all the right &c. (*a*).

Share of the King's moiety in the New River.

XXXIX. All that one full and equal moiety, half part, or share, late of the said J. W., of, in, and to all those two full and entire six-and-thirtieth parts or shares; And all that one full and equal moiety, half part, or share, late of the said J. W., of, in, and to all that one other full and entire six-and-thirtieth part or share; And also all that one full and equal moiety, half part, or share, late of the said J. W., of, in, and to all that one other full and entire six-and-thirtieth part or share, of and in all that moiety or half part of the New River, water-cut, and stream, and the profits thereof, brought from C. and A., in the counties of H. and M., or one of them, to L. and other places adjacent,

(*a*) *Or*—"And also the said recited policies of insurance, and the money secured and to become due under and by virtue of the same policies of insurance; And all the right &c."

commonly called the King's moiety, (the said moiety or half into six-and-thirty parts or equal shares to be divided), and also of and in the King's moiety of all hereditaments whatsoever relating unto or concerning the said New River, cut, or stream, and of and in all manner of profits, advantages, and commodities whatsoever, thereof, or by means or reason thereof, in any sort to be paid, raised, and gotten; And also of and in the King's moiety or half part of all fines, sums of money, rents, reversions, benefits, and commodities whatsoever, which at any time or times hereafter shall or may be raised, had, made, levied, or gotten, by means of the said New River water or water-works, or of or by reason of the conveyance of the water thereof, in or by any parts or places, or unto or for any person or persons whomsoever; And all and singular other the parts, shares, and interests, late of the said J. W., of, in, and to the said moiety or half part, called the King's moiety, of the said New River, water-cut, and stream, and the profits thereof, and the commodities, hereditaments, and appurtenances to the same belonging or appertaining. (Vide Prest. Conv. I. 374.)

In a bill of sale of a ship.

XL. All that ship or vessel called &c., of —— tons or thereabouts, belonging to the port of ——, whereof A. B. was lately, and C.D. is now master; And also all boats, sails, rigging, masts, yards, oars, tackle, apparel, furniture, cordage, casks, stocks, and appurtenances whatsoever to the said ship or vessel belonging or in any wise appertaining; the certificate of the British registry of which said ship or vessel is in the words and figures, or to the effect following, (that is to say,) &c.; And all the right &c. of, in, to, and upon the same ship or vessel, and premises respectively; and all bills of sale concerning the title to the same ship or vessel, or any part thereof, which are now in the custody or power of the said granting parties respectively.

Sporting.

XLI. Full and free liberty and privilege and power to preserve, hunt, course, shoot at, or kill, or otherwise take game, and fish in, over, or upon all or any of the lands, waters, rivers, and fishings of him the said A. B., in the said county of &c.; and for the purposes aforesaid, or any of

them, either in the name of the said A. B., his heirs or assigns, or in the name of him the said C. D., his executors, administrators, or assigns, to nominate and appoint any gamekeeper or gamekeepers, or other person or persons, and from time to time to revoke any such appointment or appointments, and in lieu thereof to appoint any other gamekeeper or gamekeepers, or other person or persons, for the purposes hereinbefore mentioned, or any of them.

Stewardship.

XLII. The office and appointment of steward of the manor or lordship of &c., and of all other manors or lordships of him the said A. B., within the said principality of Wales, and the holding and keeping of all courts leet, courts baron, views of frankpledge, and of all other courts, of what kind soever the same may be, which have heretofore been used, or used and accustomed to be holden and kept, or ought to have been, or are hereafter to be holden and kept, within or for the said manor or lordship, in such sort, manner, and form, and at such place and places, and on or at such days or times, as they or any of them have heretofore been kept and holden, as occasion shall hereafter require, with all usual and accustomed and lawful fees, dues, perquisites, profits, and advantages whatsoever to the said office or stewardship belonging, or in anywise appertaining, and that in as full, ample, and beneficial a manner, in all respects and to all intents and purposes, as any former or other steward or stewards of the said manor or lordship has or have at any time heretofore had, used, holden, enjoyed, or executed the same.

Life interest in stock.

XLIII. All and every the dividends, interest, and annual proceeds now accruing, arising, or becoming due, or which at any time, and from time to time hereafter, during the joint natural lives of the said A. B. and C. his wife, shall accrue, arise, or become payable from, upon, or in respect of the said several sums of £—— and £——(*a*), or other the funds

(*a*) In describing funded property, it is usual to say, e. g., that A. B. is entitled to the "sum of £10,000 3 per cent. Consolidated Bank Annuities." But this is clearly incorrect, for he is in fact entitled only

and securities in or upon which the same or any part thereof shall at any time hereafter be invested, and all and every the powers and remedies, both at law and in equity, of him the said A. B., for recovering, receiving, and enforcing the payment of the same, and all benefit and advantage incident or belonging thereto; And all the right, title, &c. of him the said A. B., of, in, and to the present and future interest, dividends, and proceeds, to accrue from or be paid or payable in respect of the said several sums of £—— and £—— for and during the joint natural lives of the said A. B. and C. his wife.

XLIV. 1. All such and so many and such part and parts of the messuages, pieces, or parcels of land and other hereditaments hereinbefore mentioned to have been appointed and released to or in trust for the said A. B., his heirs, appointees, and assigns, as are comprised in the said several terms of &c. respectively, with their and every of their rights, members, and appurtenances; And all the estate, right, title, interest, term and terms of years yet to come and unexpired, trust, possession, property, possibility, claim, and demand whatsoever, both at law and in equity, of the said C. D., of, in, or to the same premises, every or any part thereof. In assignment of terms.

2. All such and so many and such part and parts of the messuages, pieces, or parcels of land and other hereditaments comprised in the said term of —— years as are hereinbefore appointed and released, or expressed and intended so to be, [*Or*, as are conveyed or intended to be conveyed by the said indenture of release of even date with these presents, and the lease for a year upon which the same is grounded], with their rights, members, and appurtenants; And all the estate &c. Variations.

3. All those the messuages &c. which were comprised in the said term of —— years, or became subject to

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to a certain redeemable annuity or yearly sum of £300, payable on account or in respect of the investment of the sum of £10,000, in certain stock or funded property denominated the 3 per cent. Consolidated Bank Annuities. 4 Ves. 751; 9 Ves. 177. Vide Lord Goderich's speech on the National Debt.

that term, and vested in the said A. B., either by the means aforesaid, or any other means, and as were or are comprised in the said indenture of lease, bearing date on the day next before the day of the date of these presents, and indenture of release, bearing even date with these presents, and every part and parcel of the same, with the rights, members, and appurtenants; And all the estate, &c.

4. All those the said manors &c. which are comprised in the said term of &c., and are now vested in the said A. B., and which by the said hereinbefore in part recited indentures of lease and release, bearing date respectively &c., were conveyed and assured &c.

In assignment by a mesne lessor to a purchaser.

XLV. The piece or parcel of ground, messuage, or tenement, and all and singular other the premises comprised in, and demised or intended to be demised by the said hereinbefore in part recited indenture of &c., with their appurtenants; And the reversion and reversions, and the said yearly rent of £——, and all other rents, issues, and profits thereof; And all the estate, &c.

Tithes, moduses, and compositions in lieu of tithes.

XLVI. 1. All and all manner of tithes, tenths, oblations, and emoluments whatsoever, of or belonging to or parcel of the said respective rectories and parsonages of E. and T., or either of them, arising, growing, renewing, and increasing, and from henceforth for ever to arise, grow, renew, and increase, out of, upon, from, or in respect of All that &c., together with all and singular ways, rights, privileges, advantages, perquisites, commodities, profits, and appurtenances whatsoever, to the said tithes or tenths and hereditaments belonging or in anywise appertaining.

Variations.

2. All the tithes of corn, grain, hay, and pulse, moduses, compositions, customary and prescriptive rents and payments whatsoever, of and in lieu of the tithes of corn &c. yearly and otherwise coming, growing, renewing, or becoming due and payable in or within the township of &c.

3. And all and all manner of tithes, tenths, and moduses or compositions in lieu of tithes or tenths, duties, dues, and demands, oblations, obventions, and offerings of what nature, kind, or sort soever, arising, issuing, accruing, proceeding,

springing, or payable out of or in respect of the said capital messuage or tenements, land, and premises &c.

XLVII. And also all benefit and advantage to be derived from the trade now or lately carried on by the said A. B., and the good-will thereof, as far as the said A. B. can assign the same trade or good-will.

In assignment of trade.

XLVIII. And also the full and free liberty, use, and enjoyment of all the water flowing and running down a certain brook called —— Brook, at a certain part of the said brook, lying below a mill on the said brook, called —— Mill, in the parish of —— aforesaid, for all and every use and purpose, from the hour of six o'clock in the morning of every Tuesday until the hour of six o'clock in the evening of every Saturday, for ever; And also the liberty and privilege to erect weirs, banks, and bolts in and across the brook, at the place before specified, to divert, conduct, and convey the water out of the said brook, during all the times before mentioned, along certain water-courses now being across the lands now or late of the said A. B., from the bolt or weir near to the said place called —— Mill, as well into the said parcel of land above described, as also into the meadow called the &c., adjoining the &c., and the lands belonging to the said C. D., called the &c., for the purpose of irrigating the said lands, with liberty to cleanse, scour, deepen, and widen the said water-course, when and as often as occasion shall require, for the better conducting the said water.

Use of a water-course or brook for the purpose of irrigation.

XLIX. Give and grant, unto the said A. B. and C. D., their and each of their heirs, appointees, and assigns, owners and proprietors, for the time being, of the pieces or parcels of land, and other hereditaments, hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part thereof, and their respective servants and tenants of the same premises, and their respective tradesmen, workmen, and friends, either alone, or in company with any other person or persons, full and free liberty of ingress, egress, regress, way, and passage, as well on foot as on

In grant of way.

horseback, as for carts or carriages, loaded or unloaded, into, through, over, and upon All &c. (*a*), into, out of, and from the said pieces or parcels of land, and other hereditaments hereinbefore released, or intended so to be, or any of them, or any part thereof, at all times, and upon all occasions, during the continuance of the term of &c., for which the said E. F. now holds the said land, and during the continuance of such further or other term or terms, estate or estates therein, as the said E. F., his heirs, executors, administrators, or assigns, shall or may, at any time or times hereafter, acquire or become entitled to therein.

Parcels so as to include an accustomed right of way, (immediately following the general words).

L. And in particular the right of way or passage, either on foot or on horseback, or with carts or carriages, in, upon, over, through, or across All that new road which passes over and through certain parts of the close, parcel or parcels of land called &c., as the same way or passage or road hath been used by the said parties hitherto of the first, second, third, and fourth parts, or any or either of them, their or any or either of their tenants or occupiers, for the purpose of more conveniently enjoying all, any, or either of the said messuages &c. hereby released &c.; And also and in particular the soil of all that new road, way, or passage which passes over and through certain parts of the said closes, parcel or parcels of land called &c., and hereinbefore described, and also released &c.; subject nevertheless to a right of way or passage to and for the said parties hereto of the first, second, third, and fourth parts, and every of them respectively, their and every of their heirs, tenants, and assigns, either on foot or horseback, or with carts or carriages, in, upon, over, or across the same roads, for the purpose of more conveniently enjoying all or any of the lands

(*a*) An accurate description of the land over which the right of way is granted ought to be given. In all cases of this kind a map is particularly useful. "'Give me,' said Archimedes, 'give me but another place to stand upon, and I will give motion to the earth.'—Give me," adds Bentham, in his own quaint style, "give me but a map to point to, and I will give rest and quiet to all that inherit this our portion of the earth's surface." Real Prop. Rep. App. iii. 49.

of the said W. H. &c., as such trustee as aforesaid, or of the said &c., as such mortgagee as aforesaid, which are situated in the said county of &c., and the same last-mentioned rights of way or passage are accordingly excepted and reserved out of the release or other assurance hereby made.

In demise of railway.

LI. All that railway or road already made over that part of a certain estate called &c., situated in the parish &c., in the county &c., with full and free liberty, power, and authority for them the said A. B. and C. D., their executors, administrators, and assigns, and their agents, servants, and workmen, with horses, oxen, carts, and other carriages, to drive along and carry upon the said railway all the coal, limestone and lime, and other merchandize, materials, and things which the said A. B. and C. D., their executors, administrators, and assigns, shall or may have occasion to convey along the same, to and from their wharf at the &c., or for any other purpose whatsoever, (except and always reserving out of this present demise unto the said E. F. and G. H., their heirs and assigns, and their servants, agents, and tenants, from time to time, and at all times during the term hereby demised, full and free liberty to pass and repass along, over, and across the said railway with horses, carts, and other carriages, for the purposes of carrying away the produce of the &c., in the parish of &c. aforesaid, and of the other lands adjoining or nearly adjoining the said railway, or for driving or taking their horses or cattle to or from pasture, and also liberty to go along the same on foot or horseback for any other purpose whatsoever.)

Identity of parcels.

LII. Which said eighteen acres of pasture ground are part of the lands, which, by indentures of lease and release, bearing date respectively on or about the &c., the indenture of release being tripartite, and made &c., were assured unto and to the use of the said A. B., his heirs and assigns, for ever; and the said eighteen acres of pasture ground are the lands, which, in the said last-mentioned indenture of release, were ascertained or described in the words or to the effect following, viz.—

Identity of par-

LIII. Which said hereditaments were formerly described

cels by reference to a copy of particulars introduced in a schedule.

as containing &c., and by a late admeasurement thereof contain &c. or thereabouts, and consist of the several particulars mentioned or specified in the schedule thereof hereunder written or hereunto annexed, being a transcript from the printed particulars of sale as far as respects the parcels comprised in lot ——.

When there is a reference to a plan.

LIV. And which said closes, pieces, and parcels of land hereinbefore described, and also the closes &c. hereinafter described, are the closes &c., the ground plot whereof is set forth or delineated in the map or plan drawn in the margin of these presents, for the purpose of more particularly ascertaining and fixing the identity of the same closes, &c.

When described in a map having been conveyed by a different description in a previous deed.

LV. Which said toft, shed, workshop, and buildings, or the site or ground plot thereof, are more particularly delineated or described in the map or plan drawn in the margin of these presents, and are the same toft, shed, workshop, and buildings, as were, by a different description, comprised in certain indentures of lease and release, bearing date &c.

By reference to schedules.

LVI. All those the several messuages &c. which are mentioned, enumerated, or described in the several schedules to these presents, and every part and parcel of the same.

General reference to particulars and schedule.

LVII. 1. All &c., and all other the messuages &c., if any, which in the said printed particulars of sale were described or referred to as lots ——, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, which said several lots were in the printed particulars of sale described in such manner or to such effect as appears in the schedule hereunder written or hereunto annexed.

2. All &c., which said messuages, lands, tenements, and hereditaments were or were intended to be more particularly described in or by the said printed particulars of sale, which, as far as relates to the same messuages, lands, tenements, and hereditaments, are in the words and figures or to the effect expressed or contained in the first schedule hereunder written or hereunto annexed; And all other the messuages,

lands, tenements, and hereditaments, if any, which are mentioned and described in the said first schedule hereunder written or hereunto annexed, and every part and parcel of the same, with their and every of their rights, members, and appurtenances.

Special description with reference to the schedules.

LVIII. And also of and in all and singular other the messuages &c., which were formerly the inheritance of the said A. B., and which, by the said hereinbefore in part recited letters patent, bearing date on or about &c., were granted to or to the use of the said C. D. &c., their heirs and assigns, as tenants in common or otherwise, and which, as far as relates to the said E. F.'s one-fifth part, are now vested in or in the seisin of him the said E. F., and not sold either by him the said E. F., or the said G. F., his deceased mother, or either of them, the particulars of all which freehold and copyhold messuages &c. hereinbefore and also hereinafter respectively described, as far as the same are ascertained, together with the names of the present or late tenants or occupiers, and the amount of the rents now or lately payable for the premises respectively, are contained in the schedule thereof hereunder written or hereunto annexed; But the same particulars are added only as a further description of the said messuages &c., and not to abridge or restrain the operation of the other words of description contained in these presents.

By reference to within-written indenture.

LIX. All the messuages, lands, tenements, and all and singular other the hereditaments which by the within-written indenture were appointed and released to the use of the said C. D. and his heirs, to the intent therein mentioned, with their rights, members, and appurtenants; And the reversion &c.; And all the estate &c.

Description connecting old and new parcels.

LX. All &c. [*old description*], which said messuages &c. are now better known by the names &c.; And also all the messuages &c. lastly hereinbefore mentioned, under their modern names and descriptions, as far as the same are not effectually comprised by the description first contained in these presents.

When the conveyance is by the new description.

LXI. All &c., which said messuages &c., are the messuages &c., comprised in and conveyed by the said hereinbefore in part recited indentures of &c., by the description of All &c.

When the conveyance is by an old description, which is varied.

LXII. All those &c., heretofore commonly called or known by the several names or descriptions, and described as containing the several quantities and number of acres, more or less, hereinafter mentioned: viz. &c., all which &c., have been lately surveyed and admeasured; and the said closes &c. do now, according to such admeasurement, and by reason of an alteration in the inclosures or otherwise, consist of the several closes more particularly delineated and described in and by the map or ground plan thereof drawn in the margin of these presents.

Exception of such parts as were excepted in a former deed.

LXIII. Except and always reserved out of the messuage &c. hereby charged or made chargeable with the said annuity or yearly sum of £——, such and so many parts of the said demised lands, and of their respective appurtenances, as are excepted by the said several indentures of demise of the same lands respectively.

Exception when the parcels are in a schedule.

LXIV. Except out of this schedule, and out of the grant or release and appointment made by the indenture to which this schedule is annexed or belongs, All that &c.

Exception in a lease of timber, mines, and quarries, and right of sporting.

LXV. Except and always reserved out of this present demise unto the said A. B., his heirs and assigns, all timber and other trees, mines, minerals, and quarries now growing or being, or which at any time during the continuance of this demise shall grow or be in or upon the said demised premises, or any part thereof, with free liberty and power for the said A. B., his heirs and assigns, and his and their agents, servants, workmen, and others, at all convenient times and seasons to enter into and upon the said demised premises, to fell, cut down, and convert the said timber and other trees, and to search for, dig, raise, and make merchantable the said mines, minerals, and quarries, and the said excepted premises, and every part thereof, to take and carry away at his and their will and pleasure, making such reasonable

recompence from time to time for the damage which the said C. D., his executors, administrators, or assigns, or any of them, shall sustain by the exercise of the reservations aforesaid, or either of them, as two indifferent persons (one to be chosen by each party) shall think reasonable; And also except and reserved unto the said A. B., his heirs and assigns, the sole liberty, power, and privilege of hunting, coursing, shooting, and sporting by him and themselves, and his and their companions, gamekeepers, servants, and others, at all seasonable times, in, over, and upon the said demised premises and every part thereof.

General words for manors, houses, &c.

LXVI. Together with all and singular houses, outhouses, edifices, buildings, barns, stables, coach-houses, cottages, yards, gardens, orchards, backsides, tofts, lands, meadows, pastures, heaths, moors, marshes, waters, waste grounds, folds, fold courses and liberty of foldage, feedings, parks, warrens, commons, common of pasture, common of turbary, and all other commonable rights, mines, minerals, quarries, mills, mulctures, customs, tolls, duties, furzes, trees, woods, underwoods, and the ground and soil thereof, mounds, fences, hedges, ditches, freeboards, ways, waters, watercourses, feedings, fishings, fisheries, fowlings, courts leet, courts baron and other courts, perquisites and profits of courts, view of frankpledge, and all that to view of frankpledge doth belong, reliefs, heriots, fines, sums of money, amerciaments, goods and chattels of felons and fugitives, felons of themselves, outlawed persons, deodands, waifs, estrays, chief-rents, quit-rents, rents-charge, rents-seck, rents of assize, fee-farm rents, boons, services, royalties, jurisdictions, franchises, liberties, privileges, lights, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the said manor or lordship, messuages, farms, lands, tenements, hereditaments, and premises belonging or in anywise appertaining, or with the same or any of them respectively now or at any time heretofore demised, leased, held, used, occupied, or enjoyed or accepted, reputed, deemed, taken, or known as part, parcel, or member of them, or any part of them, or appurtenant thereunto, with their and every of their appurtenances; And the rever-

sion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the manor or lordship, messuages or tenements, hereditaments, and premises hereinbefore granted and released, or expressed, and intended so to be; And all the estate, right, title, interest, inheritance, use, trust, possession, possibility, claim, and demand whatsoever, both at law and in equity, of the said A. B., of, in, to, from, or out of the same premises, and every part and parcel thereof.

General words for houses and lands.

LXVII. Together with all and singular houses (*a*), outhouses, edifices, buildings, barns, stables, coachhouses, cottages, yards, gardens, orchards, lands, tofts, meadows, pastures, commons, common of pasture, common of turbary, and all other commonable rights, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, mounds, fences, hedges, ditches, ways, waters, watercourses, liberties, privileges, lights, easements, profits, commons, emoluments, hereditaments, and appurtenances whatsoever to the said messuages, lands, hereditaments, and premises belonging or in anywise appertaining, or with the same or any of them respectively now or at any time heretofore demised, leased, held, used, occupied, or enjoyed, or accounted, reputed, deemed, taken, or known as part, parcel, or member of them, or any part of them, or appurtenant

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(*a*) When conciseness is particularly desired, the following form is sometimes used :—

" Together with all and every the rights, privileges, easements, advantages, and appurtenances whatsoever to the said hereditaments belonging or in anywise appertaining, or thereunto now or heretofore holden, used, occupied, or enjoyed."

Or,

" And also all buildings, ways, waters, watercourses, timber and other trees, fences, easements, rights, members, and appurtenances to the said hereditaments belonging or appertaining, or reputed, deemed, or taken to belong or appertain thereto."

thereunto, with their and every of their appurtenances; And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the messuage, lands, hereditaments, and premises hereinbefore granted and released, or expressed and intended so to be; And all the estate, right, title, interest, inheritance, use, trust, possession, property, possibility, claim, and demand whatsoever, both at law and in equity, of the said A. B., of, in, to, from, and out of the same premises, and every part and parcel thereof.

General words for houses.

LXVIII. And all outhouses, edifices, buildings, cellars, sollars, areas, courts, court yards, warehouses, pumps, cisterns, privies, sewers, gutters, drains, wydraughts, backsides, ways, paths, passages, lights, easements, waters, watercourses, liberties, privileges, profits, commodities, advantages, emoluments, hereditaments, and appurtenances whatsoever, to the said messuage and other hereditaments hereinbefore granted and released or expressed, and intended so to be, or any of them, belonging or in anywise appertaining, or accepted, reputed, deemed, taken, or known, held, used, occupied, or enjoyed as part, parcel, or member of the same, or any of them; And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the said messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be; And all the estate, right, title, interest, inheritance, use, trust, possession, property, possibility, claim, and demand whatsoever, both at law and in equity, of the said A. B., of, in, to, from, or out of the same premises, and every part and parcel thereof.

General words for messuages in a lease.

LXIX. And all cellars, sollars, rooms, yards, areas, pumps, posts, and walls, fences, ways, passages, watercourses, lights, easements, profits, commodities, and appurtenances whatsoever to the said messuage or dwelling-house and premises belonging, or in anywise appertaining, and also the use of the fixtures, and other things which are mentioned and specified in the schedule or inventory thereof hereunder written.

All deeds. (In purchases).

LXX. 1. And all deeds (*a*), evidences, and writings, touching or in anywise concerning the same premises, or any part thereof, alone or jointly with other hereditaments of less value, which they the said A. B. and C. D., or either of them, now have or hath in their or either of their custody or power, or can come at without suit at law or in equity; together with true and attested copies, upon proper stamps, of all such other deeds, evidences, and writings, as concern or relate to the same premises, or any part thereof, jointly, or together with any other lands or tenements of greater value; such copies as shall be required, before the execution of these presents, to be made and written out at the costs and charges of the said A. B. and C. D., their heirs or assigns, but all future copies to be made and taken at the costs and charges of the said E. F., his heirs or assigns (*b*).

In mortgages.

2. And all deeds, evidences, and writings, touching or in anywise concerning the same premises, or any of them, either alone or jointly with other property of the said A. B., as are now in the custody, possession, or power of the said A. B., and which he can or may procure or obtain without suit at law or in equity (*c*).

(*a*) As to this clause, see Vol. I. book ii. chap. v.

(*b*) In a conveyance to uses say—

"At the costs and charges of the person or persons who for the time being shall be the owner or owners of or entitled to any estate or interest in the said lands and hereditaments under the uses hereinafter declared thereof."

(*c*) Vide Vol. I. book i. chap. iii. sect. 2, art. xx.

TITLE IV.

OF HABENDUMS.

I. 1. To have and to hold (*a*) the said messuages or tenements, lands, and hereditaments, and all and singular other the premises hereinbefore granted and released, or expressed and intended so to be (*b*), with their appurtenances, unto and to the use of the said A. B., his heirs and assigns, for ever. In conveyance in fee.

2. To have &c., unto the said A. B. and his heirs, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of or concerning the same. (Vide tit. USES). To uses.

3. To have &c., unto and to the use of the said A. B. and C. D., their heirs and assigns, for ever; upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of or concerning the same. (Vide tit. TRUSTS). Upon trusts.

II. To have and to hold the said ground, land, soil, and hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby released by the said A. B., In exchange.

(*a*) On the subject of this title see Vol. I. book ii. chap. vi.

(*b*) Mr. Butler observes, that the expressions "hereby released, or expressed or intended so to be," gave rise to an interesting controversy, well known among conveyancers, between Duane and Bradley, on the conveyance under Mr. Maire's will. Mr. Booth used the expression "granted and released, or expressed or intended so to be;" Mr. Fearne, "hereby granted and released, or expressed and intended so to be;" Mr. Sidebotham, "hereinbefore mentioned to be hereby released;" and Mr. Bradley, "hereinbefore mentioned and intended to be hereby released."—Points in Conveyancing, p. 27.

with their and every of their appurtenances, unto the said C. D., his heirs and assigns, to the only proper use and behoof of the said C. D., his heirs and assigns, for ever, *In exchange* for the messuage or tenement and hereditaments hereinafter mentioned to be hereby given, granted, and released by the said C. D., unto and to the use of the said A. B., his heirs and assigns, for ever.

In bargain and sale to an incorporated company.

III. To have and to hold the said messuage or tenement, hereditaments, and all and singular other the premises hereinbefore mentioned, and intended to be hereby bargained and sold, with their rights, members, and appurtenances, unto the said S. B. Company, their successors and assigns, for ever, for the purposes, and subject to the provisions and directions of the said Act of Parliament; Subject nevertheless to a lease granted thereof by the said A. B., by indenture bearing date the &c., to C. D., of &c., for a term of &c., from Lady-day then last, at the yearly rent of £——.

In demise.

IV. To have and to hold the said water corn-mill, piece or parcel of land, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, (except as hereinbefore is saved and reserved), with their appurtenances, unto the said C. D., his executors, administrators, and assigns, from the &c. now next ensuing, for and during and unto the full end of the term of &c. thence next ensuing, and fully to be complete and ended.

In the grant of the office of steward.

V. To have, hold, use, exercise, and enjoy the said office or appointment of steward, hereinbefore granted or intended so to be, with all and singular the rights, privileges, incidents, and appurtenances to the same belonging, or therewith had, holden, and enjoyed, unto and by him the said A. B., and to be from time to time executed by himself or his sufficient deputy or deputies, for and during and unto the full end and term of &c., to be computed from the day next before the day of the date of these presents.

In grant of annuity.

VI. To have, hold, receive, take, and enjoy the said annuity, yearly rent, or sum of £——, and every part thereof,

unto and by the said A. B., his executors, administrators, and assigns, for and during the term of —— years, to be computed from the day of the date of these presents and thenceforth next ensuing, and fully to be complete and ended, if the said C. D. and E. F., or the survivor of them, shall so long live; the said annuity or yearly rent or sum of £—— to be paid and payable unto the said A. B., his executors, administrators, and assigns, at or in the common Dining-hall of Lincoln's Inn, in the county of Middlesex, by four even and equal quarterly payments, to be made on the &c. in every year, without any deduction or abatement whatsoever for or in respect of any taxes, charges, rates, impositions, assessments, or other matter or thing whatsoever, either already taxed, charged, assessed, or imposed upon the hereditaments hereby charged with the payment of the said annuity, yearly rent, or sum of £——, or upon the said A. B., his executors, administrators, or assigns, or any person or persons whomsoever, by reason thereof, by authority of Parliament, or otherwise howsoever; together with a proportional part of the said annuity or yearly sum, for the time or number of days which shall elapse between the day of payment next preceding the death of the survivor of them the said C. D. and E. F., and the day of the decease of such survivor inclusive, in case such person shall die during the said term of —— years, the first payment of the said annuity to become due on the &c. now next ensuing, if either of them, the said C. D. and E. F., shall be then living; but if not, then only a proportional part of the said annuity, from the date of these presents up to and inclusive of the day of the decease of the survivor of them, the said C. D. and E. F., to be paid on the day of the death of such survivor.

Of policies of insurance.

VII. And to have and to hold the said policy or instrument of insurance, and money thereby secured, or to become due and payable under and by virtue of the same and every part thereof, unto the said A. B., his executors, administrators, and assigns, as his and their own goods, chattels, and effects.

In a release by way of partition.

VIII. To have &c. the said messuages &c., and all and sin-

gular other the premises hereby released, or intended so to be, and every part and parcel &c., with their and every of their rights, members, and appurtenants, free from all incumbrances, except as hereinafter is excepted, and discharged from all liens at law and in equity, and warranties, by reason of the said agreement for a partition unto &c.; To the uses &c.

In release of a rent-charge.

IX. To the intent that the said messuages and hereditaments so conveyed and assured to the said A. B. as aforesaid, or such of them as are charged or chargeable with the same annuity or rent-charge, may henceforth be exonerated, released, and discharged of and from the same annuity or rent-charge, and all the arrears thereof.

In surrenders of terms.

X. To the intent that the residue of the same term of and in the same hereditaments may be merged and extinguished, and by way of surrender, release of right of entry or otherwise, cease and determine to all intents and purposes; And to this further intent, that in the mean time, and until the same term shall be merged and extinguished, the said C. D., his executors, administrators, and assigns, shall stand and be possessed of and interested in the same hereditaments for all the residue of the same term, upon the same trusts, and for the same ends, intents, and purposes, as are hereinbefore declared and expressed of and concerning the several terms of years hereinbefore assigned to the said A. B.

In a conveyance to new trustees to the uses of a settlement, excepting such parcels as are held by way of mortgage.

XI. To have and to hold all the said rectories, manors, messuages, farms, lands, tenements, advowsons, tithes, and hereditaments hereby released or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenants, (other than and except the manor, messuages, farms, lands, and hereditaments, with their rights, members, and appurtenants, which are held by way of mortgage, subject to redemption in equity), unto the said A. B. and his heirs, for all the estate and interest, estates or interests which the said E. D. and E. F. have therein; Nevertheless to such uses &c. (Vide tit. USES).

XII. To have and to hold the said mansion, manor house, or farm-house, buildings, closes, pieces and parcels of meadow and pasture ground, fishery or right of fishery, hereditaments, and all and singular other the premises hereby released or otherwise assured, and every part and parcel of the same, with their and every of their rights, members, and appurtenants, Unto and to the use of the said A. B. and C. D., their heirs and assigns, Nevertheless upon trust to convey, settle, and assure, and in the mean time to stand and be seised of the same mansion house &c., and all and singular other the premises hereby released or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenants, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisions, declarations, and agreements, upon, under, and subject to which the same ought to be settled, and in the mean time to be held according to the directions, true intent, and meaning of the hereinbefore in part recited indenture of settlement or articles for a settlement, made on the marriage of the said E. F. and G., his wife, and upon no other trust, nor for any other end, intent, or purpose whatsoever.

To trustees in trust to convey and in the meantime stand seised to uses declared by marriage articles.

XIII. To have and to hold the said manor &c., and all and singular other the premises hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, royalties, members, and appurtenants, (subject nevertheless to the yearly fee-farm rent of £——, payable out of the premises or some of them, to his Majesty, his heirs, successors, and assigns for ever, and which is henceforth to be paid by the said A. B., his heirs or assigns, out of such of the said premises as are liable to the payment thereof), unto and to the use of the said A. B. and his heirs and assigns, for and during the lives of &c., and the lives and life of the survivors and survivor of them, if the estate and interest of all or any one or more of the said granting and confirming parties shall so long continue &c.

To one and his heirs for lives, if the estate of all or any of the granting parties should so long exist, subject to fee-farm rent.

XIV. To have and to hold all the freehold parts of the said A. B. of and in the hereditaments hereinbefore de-

To uses of freehold and trusts of leasehold by reference.

scribed, and of and in their rights, members, and appurtenants, including the said right and free liberty hereinbefore also described, unto the said C. D., his heirs and assigns, in severalty, and to the same uses, upon the same trusts, and for the same ends, intents, and purposes as the freehold parts late of the said testator E. F. deceased, of and in the hereditaments so allotted, parted, and divided as aforesaid, did by virtue of the same will, or by descent or otherwise, at the time of making the partition, stand limited, settled, and assured, or such and so many of the same uses, estates, and interest as are now subsisting undetermined or in being, and are capable of taking effect, or as near thereto as may be, and the deaths of parties and other intervening circumstances will admit, and according to the rules of law and equity applicable thereto, and to and for no other use, intent, or purpose whatsoever. And to have and to hold all the chattels real or leasehold part or parts of the said A. B. of and in the hereditaments hereinbefore described, and of and in their rights, members, and appurtenances, including the right and free liberty hereinbefore also described, unto the said C. D., his executors, administrators, and assigns, and to be held by him and them in severalty, henceforth for and during all the residues and remainders of the several and respective terms for years which are in the same shares respectively now therein to come and unexpired; Nevertheless upon the same trusts, and for the same ends, intents, and purposes as the same shares, by virtue of the said will of the said E. F., or by reason of the death of the said I. W. in the lifetime of the said E. F., did, at the time of making the said partition, stand limited, settled, and assured, or such and so many of the same trusts, ends, intents, and purposes as are now subsisting undetermined and capable of effect, or as near thereto as may be, and the deaths of parties and other intervening circumstances will admit, and according to the rules of law and equity applicable thereto, and to, for, and upon no other trusts, intents, or purposes whatsoever.

Of sums and securities in trust

XV. To hold, receive, and take the said sum of £——(a)

(a) Recital of application to agents of tenant in tail to pay off in-

and interest, and the benefit of all securities for the same, and all advantage to arise therefrom, unto the said P. W. and C. W., parties hereto, their executors, administrators, and assigns, henceforth as their own money and effects; Nevertheless upon trust for and for the benefit of the said C. W. the tenant in tail, his executors, administrators, and assigns, so and in such manner that the said sum of £——, and all interest to become due for the same, may be and may be deemed part of his personal estate, unless and until he shall, by some writing under his hand, declare that the hereditaments and premises hereby assigned, or intended so to be, shall be discharged of and from the payment of the said sum of £——.

for tenant in tail as part of his personal estate.

XVI. To have and to hold &c., in confirmation of the said annuity or yearly sum of £——, during the life of the said A. B., and also in confirmation of the powers and remedies hereby given for enforcing the payment of the same, and subject thereto, in confirmation of the term of ninety-nine years determinable as aforesaid, which is hereinbefore

In confirmation of annuity, &c.

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cumbrances, and of his agreement to do so on having assignment of term and transfer of debt to trustee of tenant in tail to be considered as part of his personal estate :—

" And whereas the said E. N. is desirous of receiving the said sum of £——, and hath requested the said P. W. and C. W., parties hereto, as such agents and receivers for the said C. W., the tenant in tail, to pay him the same sum of £——, and the said P. W. and C. W., parties hereto, as such agents and receivers, have determined to pay the said sum of £——, by and out of the monies now in their hands belonging to the said C. W., the tenant in tail, and to take a transfer and assignment of the said hereditaments comprised in the said term of five hundred years, and vested in the said E. W. as aforesaid, and of the said principal sum of £—— due upon the security thereof, in their own names, in manner hereinafter mentioned, and so that the said sum of £—— may be and be deemed part of the personal estate of the said C. W. &c."

granted and demised to the said C. D., his executors, administrators, and assigns, and the trusts declared of the same term; and afterwards, and in the mean time subject thereto &c.

To partners as partnership property.

XVII. To have and to hold &c., unto and to the use of the said A. B. and C. D., their heirs and assigns, for ever; Nevertheless as part of their capital stock in their said trade or business of &c., and as or in the nature of personalty, and in the same parts, shares, and proportions in which they are entitled to the capital of their said partnership; and for that purpose to be sold and converted into money on the dissolution or determination of the said partnership, or sooner if the parties interested shall think fit.

Another form.

XVIII. To have and to hold &c.; Nevertheless to be held by them as or in the nature of personal estate and as part of the effects of their partnership; and for that purpose on the determination of their partnership to be sold and converted into money by the said partners, or the survivors or survivor of them, or his heirs, in the same manner as the said partnership effects are to be sold and converted into money, and without any obligation on the person or persons who shall become the purchaser or purchasers thereof to see to the application of his, her, or their purchase-money, or any part thereof.

In an assignment of a share of partnership trade.

XIX. To have, hold, receive, take, and enjoy the said one fourth part or share or other part and share of and in the said joint trade &c., and all and singular other the premises &c., unto the said A. B., his executors, administrators, and assigns, in as full, ample, and beneficial a manner, to all intents and purposes, as the said C. D. can or may assign or otherwise assure the same; Subject always, nevertheless, to the payment of all and singular the debts and sums of money now due or owing on account of the said joint trade, and to the lien of all contracts or engagements made or entered into for the purposes of the same trade, so far as any such liens are subsisting.

In assignments of leasehold with right of renewal.

XX. To have and to hold the said messuage &c., and all and singular other the premises hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their appurtenances, unto the said J. C., his executors, administrators, and assigns, henceforth, for and during all the residue and remainder of the said last-mentioned term of forty years, and all other terms, if any, in the said premises, which are now to come and unexpired, and for and during all the interest, benefit, and right of renewal of them, the said C. K., and J., his wife, and J. G., party hereto, under the covenant or agreement for renewal of the said leases and terms respectively, and in as full, large, complete, and beneficial a manner, to all intents and purposes, as the said C. K., and J., his wife, and J. G., party hereto, can or may assign the same premises, and right and benefit of renewal respectively; Subject nevertheless to the payment of the rent, and to the observance and performance of the several covenants, conditions, and agreements respectively reserved, and contained in the said in part recited indenture of lease, or which shall be reserved and contained in any new or other lease of the same premises, to be made or granted under the said covenants for renewal (*a*).

Special form, so that a person may have a reversion in each of several leases.

XXI. To have and to hold the premises demised by each of the same underleases respectively, henceforth, for and during such term or time as shall make up and be equal to a term or time to expire and determine at the end of four days next after the expiration, by effluxion of time, of the term granted, or expressed or intended to be granted, by the same underleases respectively, so that the said A. B., his executors, administrators, and assigns, may be entitled, by way of reversion, to hold and enjoy the premises comprised in and demised by each of the same underleases respectively, for all the residue of the time granted, expressed, or intended to have been granted by the same underleases respectively, and which is now to come and unexpired, and for a

(*a*) Vide Vol. I. book i. chap. ii. sect. 3. art. xl.

further time of four days beyond the time appointed for the continuance of the same respectively.

During the permission of the Society of Lincoln's Inn.

XXII. To have and to hold &c. for the term of one thousand years, if the said A. B., his heirs, executors, administrators, or assigns, or any of them, or his or their tenant or tenants, as such, shall be so long permitted by the Honourable Society of Lincoln's Inn, or the Master and Benchers of that society, to have the full and peaceable use and enjoyment of the said cellar, built by the said C. D. or the said E. F. for the use or accommodation of the chambers of the said A. B., and now in the occupation of the said A. B., or his tenant.

In assignment of leaseholds for the residue of two several terms.

XXIII. To have and to hold the said leasehold lands and hereditaments, and all and singular other the premises hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenants, unto the said A. B., his executors, administrators, and assigns, henceforth, for and during the several residues and remainders now to come and unexpired of the said several and respective terms of —— years and —— years of and in the same hereditaments respectively, and all others the terms and estates, if any, which the said granting and assigning parties respectively have in the said premises; Subject nevertheless to the payment of the several yearly rents of £—— and £—— respectively, and also subject to the covenants, conditions, and agreements, under and subject to which the said leasehold premises are respectively held, under and by virtue of the said several hereinbefore mentioned indentures, bearing date respectively on or about the &c.

Where the demise is of a remainder for life expectant upon an estate for life.

XXIV. To have and to hold the said messuage &c., unto the said A. B., his executors, administrators, and assigns, from and after the decease or other sooner determination of the estate for life of the said C. D., thenceforth, for and during the term or time of &c. fully to be complete and ended, if the estate and interest of the said E. F. in the same should so long continue, and without impeachment of waste.

In a lease of cottages, part of waste, from the lord of the manor and churchwardens of the parish on the part of the freeholders, subject to restrictions from taking apprentices, &c.

XXV. To have and to hold the said part of the said messuage &c. hereinbefore demised and leased, with their and every of their appurtenances, unto the said A. B., his executors, administrators, and assigns, from the day of the date hereof for and during and unto the full end and term of &c. thence next ensuing, and fully to be complete and ended, if the said H. H. and also the said A. B. shall so long continue to occupy the said hereby demised premises, and shall not during such occupation, without the consent of the churchwardens and overseers of the poor for the time being of the hamlet of B., take and keep any apprentice or yearly servant; nor take any more lands from either of the commons than is at present enclosed; nor without the consent in writing of the said H. H. or his assigns, and also of the churchwardens and overseers for the time being of the said hamlet of B., assign the term, estate, or interest in the hereby demised premises, or any part thereof; nor grant any underlease of the same premises, or any part thereof; nor take a lease of all or any part of any other tenement in the said parish of B., or any other parish; nor take down, pull down, or destroy all or any part of the said hereby demised messuage &c., or the buildings thereof; nor purchase any lands &c. of freehold, copyhold, or leasehold tenure, within the said parish of B.

In assignment of lease and stock in trade, with consent of original lessor, an additional rent being reserved.

XXVI. To have and to hold the said hereditaments, and all and singular other the premises comprised in the said indenture of lease, with their and every of their appurtenances, unto the said A. B. and C. D., their executors, administrators, and assigns, for all the residue now to come and unexpired of the said term of &c.; Subject nevertheless to the rent, covenants, conditions and agreements, as well in and by the said indenture of lease as also hereinafter reserved and contained, and which from the &c. ought on the tenant's or lessor's part to be paid, kept, observed, and performed. And to have and to hold, take, and enjoy all and every the stock in trade, furniture, fixtures, and other things which are mentioned and specified in the said inventory or particular hereunder written or hereunto annexed, unto the said A. B. and C. D., their executors, administrators, and assigns, as his and their own proper goods and chattels.

In conveyance and assignment of real and personal estate, under the decree of the court, to the trustees of a will.

XXVII. To have, hold, preserve, receive, take, and enjoy all and singular the premises hereinbefore released and assigned respectively, or expressed and intended so to be, with their appurtenances, unto and to the use and by the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns respectively, according to the nature and quality thereof respectively; Subject nevertheless to such rights and equities of redemption as are now subsisting in or upon the same premises, or any of them, upon the trusts nevertheless, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations in and by the said hereinbefore in part recited will and codicil of the said testator, or either of them, expressed or declared and contained of or concerning the same respectively, or such of them as shall from time to time be subsisting and capable of taking effect.

In assignment of underlease.

XXVIII. To have and to hold the said piece or parcel of ground, messuage, or tenement, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, with their appurtenances, unto the said A. B., his executors, administrators, and assigns, for all the residue now to come and unexpired of the said term of &c., created by the hereinbefore in part recited indenture of lease; Subject nevertheless to the rents, covenants, and agreements in and by the said indenture reserved and contained, and which henceforth, on the part of the tenant or lessee, are and ought to be paid, observed, and performed.

In assignment by a tenant of several houses, at an entire rent of one house freed from the rent.

XXIX. To have and to hold the said messuage or tenement, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, with their appurtenances, unto the said C. D., his executors, administrators, and assigns, henceforth for and during all the residue and remainder now to come and unexpired of the said term of &c., created by the said hereinbefore in part recited indenture of lease, freed and absolutely discharged of and from the said yearly rent of &c., and any part thereof; But subject nevertheless to the covenants and agreements in the said indenture contained, (except those relating to the said yearly rent),

on the part of the tenant or lessee to be observed and performed, so far as the same are and ought from henceforth to be observed and performed in respect of the said messuage and premises hereinbefore assigned, or intended so to be.

In mortgage by demise.

XXX. To have and to hold the said messuage, lands, hereditaments, and premises hereby bargained, sold, and demised, or expressed and intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said A. B. and C. D., their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the term of &c. thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste; Subject nevertheless to the proviso or agreement for redemption hereinafter contained.

When it is an underlease.

XXXI. To have and to hold the said messuage &c., unto the said A. B., his executors, administrators, and assigns, henceforth for and during the several residues and remainders now to come and unexpired of the said several and respective terms of &c. therein, other than and except the last day of each of the same terms respectively; Subject nevertheless, by way of lien or charge, and not of contract, to the several yearly rents reserved upon the said leasehold hereditaments respectively, and to the conditions and agreements under and subject to which the said leasehold hereditaments are respectively held, under and by virtue of the said several hereinbefore in part recited indentures of lease thereof respectively; Nevertheless, the same leasehold hereditaments to be held upon the trusts, &c. (Vide tit. TRUSTS).

In demise for securing annuity.

XXXII. To have and to hold the said lands, tenements, hereditaments, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, with their rights, members, and appurtenances, unto the said A. B., his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during and unto the full end and term of &c. thence next ensuing, without impeachment of waste; But, nevertheless,

upon the trusts, and to and for the ends, intents, and purposes hereinafter expressed and declared of and concerning the same; that is to say &c. (Vide tit. TRUSTS).

In mortgages of leases and policy of assurance.

XXXIII. To have and to hold all such and so many and such part and parts of the premises hereinbefore assigned, or intended so to be, as are comprised in and intended to be demised by the said hereinbefore in part recited indenture of demise of the —— day of ——, unto the said C. D., his executors, administrators, and assigns, for all the residue and remainder now to come and unexpired of the said determinable term of —— years thereby created; Subject to the yearly rent of £——, and to the payment of the heriots, and also subject to the suit of court, fines, services, and amerciaments, and to the covenants, provisoes, and agreements in the said hereinbefore in part recited indenture of demise of the —— day of ——, reserved, mentioned, and contained, on the part of the lessee to be paid, performed, and kept. And to have and to hold all such and so many, and such part and parts of the premises hereinbefore assigned, or intended so to be, as are comprised in and intended to be demised by the said before in part recited indenture of demise of the —— day of ——, unto the said C. D., his executors, administrators, and assigns, for all the residue and remainder now to come and unexpired of the said determinable term of —— years thereby created, subject to the yearly rent of £—— and the heriots, and also subject to the suit, fines, services, and amerciaments, and to the performance of the covenants, provisoes, and agreements in the said hereinbefore in part recited indenture of demise of the —— day of —— reserved, mentioned, and contained, or referred to, on the part of the lessee, to be paid, performed, and kept. And also to have, hold, receive, and take the said policy of assurance, and all monies recoverable thereby, unto and by the said C. D., his executors, administrators, and assigns, as his and their own policy and effects; But subject, as to all and singular the premises hereby assigned, or intended so to be, to the proviso or condition for redemption hereinafter contained.

In assignment of mortgage-money.

XXXIV. To have, hold, receive, perceive, take, and enjoy the said principal sums of £—— and £——, and all and singular other the premises hereby assigned, or intended so to be, unto the said A. B., his executors, administrators, and assigns, to and for his and their own absolute use and benefit, in as full, large, ample, and beneficial a manner, to all intents and purposes, as they the said C. D. and E. F. (as such trustees as aforesaid) could or might have held, enjoyed, and enforced payment of the same, in case these presents had not been made and executed. (Vide tit. POWERS).

In transfer of mortgage and further charge.

XXXV. To have and to hold the said messuage &c. unto and to the use of the said A. B., his heirs and assigns for ever, freed and absolutely discharged of and from all power and equity of redemption, by virtue of the proviso contained in the said hereinbefore in part recited indenture of release of &c.; But subject nevertheless to the proviso or condition hereinafter contained for redemption of the same premises; that is to say &c. (Vide tit. PROVISOES AND DECLARATIONS).

In transfers of mortgage upon trusts for sale.

XXXVI. To have and to hold the said manor or lordship &c. unto and to the use of the said A. B. and his heirs, upon such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, upon, with, under, and subject to which the said manor or lordship &c., and all and singular other the premises hereinbefore granted and released, would, under or by virtue of the said hereinbefore in part recited indenture of the &c., stand and be subject and liable in case this present indenture had not been made and executed, and the name of the said A. B. had in the hereinbefore in part recited indenture of mortgage been inserted instead of the said C. D.

In assignment of terms to trustee.

XXXVII. To have and to hold the said messuages, tenements, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, with their appurtenances, unto the said A. B. and C. D., their executors, administrators, and assigns, for and during all the

residue and remainder now to come and unexpired therein respectively of the within-mentioned term of &c., and for and during the residue of any term or terms of years for which the same premises, or any part thereof, are holden; Upon the trusts nevertheless, and to and for the intents and purposes &c. (Vide tit. TRUSTS).

In mortgage of annuity, judgment, &c.

XXXVIII. To have, hold, receive, and take the said annuity or yearly sum of £——, and the powers, covenants, and remedies, judgment, sum and sums of money, and other the premises hereinbefore assigned, or expressed and intended so to be, and every of them and every part thereof, unto and by the said A. B., his executors, administrators, and assigns; Subject nevertheless to the proviso or condition hereinafter reserved and contained for redemption of the same premises. (Vide tit. PROVISOES AND DECLARATIONS).

In assignment of a newspaper as a collateral security.

XXXIX. To have and to hold the said newspaper, presses, types, and materials, and the gains, profits, and advantages arising from the said newspaper, and the good-will thereof, unto the said A. B., his executors, administrators, and assigns, Upon the trusts &c. (Vide tit. TRUSTS).

Discharged from former mortgage, but subject to an agreement for making new one as security for part of purchase-money remaining unpaid.

XL. To have and to hold the said messuage &c., discharged from the said first-mentioned term of 1000 years, and the principal monies and interest which were secured by the mortgage and further charge on the same term, but subject to the agreement that such mortgage should be made to the said A. B. [*vendor*], his executors, administrators, or assigns, for the term of 1000 years, for securing the said sum of £—— and interest unto the said A. B., his executors, administrators, and assigns.

Discharged from proviso of cesser.

XLI. To have and to hold the said messuage &c. discharged of and from the proviso or agreement contained in the said indenture of release or settlement, for ceasing or determining the said term of 1000 years.

TITLE V.

OF REDDENDUMS.

I. YIELDING and paying therefore unto the said A. B., his heirs or assigns, at the end of the said term, the rent of a peppercorn (*a*), if the same shall be lawfully demanded; To the end and intent that the said C. D. may by means hereof, and by virtue of the statute made for transferring uses into possession, be in the actual possession of all and singular the messuage and premises hereinbefore bargained and sold, or expressed and intended so to be, and thereby be enabled to accept and take a grant and release of the reversion and freehold thereof, which is intended to be made by a certain indenture of release, already prepared and engrossed, and intended to bear date the day next after the day of the date of these presents, and to be made between the said A. B. of the one part, and the said C. D. of the other part.

Pepper-corn rent in bargain and sale for a year.

II. Yielding and paying therefore yearly and every year, during the said term hereby granted, unto the said A. B. and C. D., their executors, administrators, or assigns, the clear rent or sum of £—— of lawful money of Great Britain, without making any deduction or abatement whatsoever for or in respect of any present or future parlia-

In a lease for years, payable quarterly, without any deduction or abatement for taxes, &c.

(*a*) It is usual with some draftsmen, though certainly unnecessary, to reserve a pepper-corn rent, as well as to insert a nominal money consideration. To raise the use, there must be a *valuable* consideration—not necessarily money, for a pepper-corn rent is sufficient. *Barker* v. *Keate*, 2 Vent. 35, 1 Mod. 262, 2 Mod. 249, 252. The nominal consideration need not, and indeed never is paid; for, if the receipt is acknowledged *in the deed*, the parties and their heirs are estopped from denying payment. Gilb. Uses, p. 494. (Vide Vol. I. book ii. chap. iii.)

mentary or parochial taxes, rates, assessments, or payments whatsoever, by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year; the first payment thereof to become due and be made on the &c. next ensuing the date of these presents.

In a lease for years, determinable on the death of a person.

III. And in case the said A. B. shall die on any other day than one of the said days of payment, then also yielding and paying unto &c. a proportionable part of the said rent for such time as shall elapse between the day of the decease of the said A. B. and such of the said days of payment as shall happen next before his decease, the first payment of the said yearly rent to become due and be made on the &c. now next ensuing the date of these presents, and the proportionable part of the said rent, which shall become due on the decease of the said A. B., to be due and be made immediately upon or after his decease, and demand made thereof.

A second reddendum in a lease of a house, reserving a rent for trades carried on.

IV. And in case the said A. B., his executors, administrators, or assigns, or any of them, shall at any time or times during the said term hereby granted, use or follow, exercise or carry on, or cause, permit, or suffer to be used or carried on, in or upon the premises hereby demised, or any part thereof, the trade or business of a soapmaker or soapboiler, tobacco pipe maker or burner, wax chandler or tallow chandler, goldbeater, brazier, pewterer, ironmonger, smith, blacksmith, farrier, tanner, fellmonger, currier, leather dresser or cutter, shoemaker, dyer, scourer, weaver, fishmonger, butcher, tripe boiler or seller, baker, victualler, sugar baker, or chymist, or use, or permit or suffer the said premises, or any part thereof, to be used as or for a slaughter house, a house for melting of tallow, common brewhouse or distillery, chandler's shop, glasshouse, or for a laystall, or for making or burning bricks, tiles, lime, or bones, or for making any auction or sale therein, or for any other act, trade, or business whatsoever, without the license or consent in writing for such purpose first had and obtained under the hands and seals of the said C. D. and E. F.,

their executors, administrators, or assigns, then likewise yielding and paying during such time as the said demised premises, or any part thereof, shall be so inhabited, used, or occupied, over and above the said yearly rents hereinbefore reserved unto the said C. D. and E. F., their executors, administrators, and assigns, the further yearly rent or sum of £—— of like lawful money of Great Britain, to be paid and payable tax-free and quarterly, by equal portions, on the same quarterly days and times in every year as are hereinbefore mentioned for payment of the yearly rent hereinbefore reserved, the first quarterly payment thereof to become due and be made on such of the beforementioned quarterly days as shall next happen after all or any part of the said demised premises shall be so inhabited, used, or occupied as aforesaid.

Of an additional rent for every acre dug up for bricks, &c.

V. And also yielding and paying therefore yearly and every year, during the term hereby granted, unto the said A. B., his executors, administrators, or assigns, the sum of £—— for every acre of the said demised land or ground which he the said C. D., his executors, administrators, or assigns, shall during the said term dig or break up, or cause or procure to be dug or broken up for sand, gravel, clay, loam, brick earth or potters' earth, or clay or tile clay, or permit or suffer bricks, pots, or tiles to be made thereon, or on any part thereof, and so in proportion for a greater or less quantity than an acre, by even and equal portions, on the days and times hereinbefore limited and appointed for the payment of the hereinbefore reserved rent, the first payment thereof to begin and be made on such of the said days as shall first happen after the digging or breaking up the said land, or any part thereof, for sand, gravel, clay, loam, brick earth, potters' earth, clay, or tile clay, or permitting or suffering bricks, pots, or tiles to be made thereon, or on any part thereof, save and except so much of the said land as may from time to time, during the said term, be dug or broken for the purpose of making wells or sewers for any messuages or tenements which may be erected thereon, or for making foundations to any erections or buildings which may be erected or built thereon, or on any part thereof.

In lease made by mortgagor and mortgagee.

VI. Yielding and paying therefore, yearly and every year, during such part of the said term hereby demised as the said premises shall remain in mortgage as aforesaid, (except as hereinafter is mentioned), unto the said A. B. [*mortgagee*], his heirs or assigns, the clear yearly rent or sum of £—— of lawful money of Great Britain, and from and after payment and satisfaction of the said mortgage, and all sums due thereon, then yielding and paying, yearly and every year, during the residue of the said term, the like yearly rent or sum of £——, unto the said C. D. [*mortgagor*], his heirs or assigns &c. (*a*).

In leases under powers.

VII. Yielding and paying therefore yearly and every year during the said term hereby granted, unto the said A. B., or the person or persons who for the time being shall be entitled to the said hereditaments and premises in reversion or remainder, the rent or sum of £—— of lawful money of Great Britain, by four even and equal quarterly payments in each year, to be made &c. at the end of each quarter day, computing the quarter from the execution of these presents, free and clear of and from all taxes, charges, rates, assessments, and impositions whatsoever, parliamentary, parochial, or otherwise, now or at any time hereafter during the said term hereby granted to be taxed, charged, assessed, or imposed upon, for, or in respect of the said hereby demised premises, or any part thereof, or for or in respect of the said yearly rent of £——, or any part thereof, or for or on account or in respect of any other matter, cause, or thing whatsoever; the first payment of the said yearly rent or sum of £—— to become due or be made at the end of the first quarter next ensuing the execution of these presents.

(*a*) The lease should be made by the mortgagee, (with the mortgagor's concurrence), and the rent reserved according to the Form above given. It is not uncommon, however, to make the mortgagor demise with the consent only of the mortgagee; but this is clearly a mistake; for, on the execution of the mortgage, the mortgagor has no legal estate, but only an equity of redemption. It has already been remarked in another place, that the lease of a mortgagor without the concurrence of the mortgagee, may be avoided by the latter.

Of wheat and malt to a college, or money in lieu, at price in adjoining market.

VIII. And also yielding and paying therefore yearly during all the said term unto the said Provost and College, and their successors, within the said College of Eton, —— gallons and —— quarters of good, sweet, seasonable, and merchantable wheat, of the best sort, and —— gallons of good, sweet, seasonable, and merchantable malt, of the best sort, such as shall be approved and allowed by the bursars, baker, and brewer of the said College, or any other thereunto appointed by the Provost of the said College for the time being, the one half of the said wheat and malt to be delivered half yearly on the &c., and the other half on the &c., or in default thereof to pay so much ready money for the said wheat and malt, after the rate as the best wheat and malt shall be sold in the market of Windsor the next market day before the said wheat and malt shall be due.

Of rent for moieties, and of additional rent for every acre, and in proportion for less than an acre converted into tillage, and of further additional rent during last four years, and after time of such conversion.

IX. Yielding and paying, for or in respect of the first-mentioned moiety of the said demised premises, unto the said A. B. and C. D., their heirs or assigns, and to the person or persons who for the time being shall be so entitled to the said first-mentioned undivided moiety or half part or share of the said hereby demised premises in reversion or remainder, expectant on the said term of —— years, the yearly rent or sum of £——; And yielding and paying unto the said E. F., her heirs or assigns, for or in respect of her moiety of the said hereby demised premises, the like yearly rent or sum of £——; And also yielding and paying for each of the said moieties of the said hereby demised premises, unto the person or persons who for the time being shall be entitled to the same moiety in reversion or remainder, expectant on the determination of the term hereby granted, the yearly rent or sum of £—— for each and every acre, and in that proportion for any less quantity than an acre, of the said hereby demised premises, other than those mentioned in the schedule to these presents, and excepting the close called &c., which shall be ploughed or converted into tillage at any time during the term hereby granted; the said rents on each acre, and on any part less than an acre, to commence on the quarter day hereinafter mentioned next before the time that any ground (except as aforesaid) shall

be ploughed or converted into tillage, and to continue thenceforth during the term hereby granted; And yielding and paying for each moiety of the said hereby demised premises, unto the person or persons who for the time being shall be entitled in reversion or remainder expectant on the term hereby granted in the same moiety, an additional rent of £—— of like lawful money, from and after such time, during the last —— years of the term hereby granted, as all or any of the lands or grounds comprised in the schedule to these presents, and the said ground called &c., shall be cropped contrary to the stipulations and agreements hereinafter contained for cropping the same lands or grounds, and thenceforth during the residue of the term hereby granted; the said several rents to be payable and paid, by quarterly payments, at or upon the four most usual days or times for payment of rent in the year, that is to say, the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, and the first payment of each of the said rents of £—— to become due and be made on the —— day of —— now next ensuing, &c.

Rent in certain proportions, and an additional rent for ploughed land.

X. Yielding and paying therefore yearly and every year during the said term of —— years the yearly rent or sum of £—— of lawful money of Great Britain, in the shares and proportions, on or at the days or times, and in the manner hereinafter mentioned; (that is to say,) the sum of £——, part thereof, on the —— day of ——, the sum of £——, farther part thereof, on the —— day of ——, the sum of £——, other part thereof, on the —— day of ——, and the sum of £——, the residue thereof, on the —— day of ——, in every year of the said term, except the last year thereof, and the last payment in the last year thereof to be made on the —— day of ——, instead of the —— day of ——, without any deduction or abatement whatsoever for or in respect of the land tax, or any other present or future taxes, charges, rates, impositions, or assessments, or any other matter, cause, or thing whatsoever, the first payment in respect of the said yearly rent to be made on the —— day of —— next ensuing the day of the date of these presents; And also yielding and paying yearly and every year during the said term of ——

years the additional yearly rent or sum of £—— for every acre, and so in proportion for any greater or less quantity than an acre, of the said premises hereinbefore demised, which shall be ploughed, dug, broken up, or converted into tillage or garden ground, contrary to and in breach of the covenant hereinafter contained; the said further rent of £—— to be paid on the last day of payment in every year in which the same shall happen to become payable, without any deduction or abatement whatsoever.

Of additional rent in time of war.

XI. Yielding and paying therefore yearly and every year unto the said A. B., his heirs or assigns, the several rents or sums of £—— and £—— of lawful money of Great Britain, which are hereinafter mentioned, at two of the most usual feasts or days of payment of rent in the year; (that is to say), the feast day of the Annunciation of the Blessed Virgin Mary, and St. Michael the Archangel, by even and equal portions; (that is to say), during the time which Great Britain shall be at war with any European or American Power, the yearly rent or sum of £——, and at all other times during the term hereby granted the yearly rent or sum of £——, the said rent of £—— a year to be payable on every rent day which shall happen during the present or any future war, and the said rent of £—— a year to be payable at all other times of the term hereby granted, and the said rent for the time being to be payable and paid free and clear of and from all deductions whatsoever; the first payment of the said rent, whether the same shall be at the rate of £—— or £——, to become due on the feast day of the Annunciation of the Blessed Virgin Mary which will be in the year of our Lord &c.

Of monthly account, and also every month one-eighth part of the moiety of coals landed on premises, or one-eighth part of monies to be produced by any sale thereof, at election of lessor.

XII. Yielding and rendering therefore monthly and every month, on the first Thursday, if required, in every month, during the continuance of this demise, unto the said A. B., his heirs, executors, administrators, or assigns, and also to the proprietor of the other undivided moiety of the said lands and premises, if demanded, a true and perfect account in writing of all the coals dug and landed by virtue of these presents; And also yielding and rendering monthly and every month,

or when demanded, during the continuance of this demise, to the said A. B., his heirs, executors, administrators, or assigns, one full eighth part of the moiety of the coals to be landed on the said premises, the whole into eight equal parts to be divided, free worked, dug up, wrought, or landed, or in lieu thereof one full eighth part of all the monies which shall be received by sale of the same coals, the whole into eight equal parts to be divided, at the choice and election of the said A. B., his heirs, executors, administrators, and assigns.

Rents to be paid at the end of three months from a given event.

XIII. Yielding and paying &c. by quarterly payments, to be made at the end of every three calendar months, to be computed from the day of the decease of the said A. B., and by even and equal portions, clear &c.; the first quarterly payment thereof to become due and be made at the end of the first three months next after the death of the said A. B., provided the said C. B. shall be then living, and in the event of the death of the said C. B. after the death of the said A. B., and between or in the interval of any three calendar months to be computed as aforesaid, such part of the said annuity or yearly sum of £——, as shall be in proportion to the time or number of days which, exclusive of the day of the death of the said C. B., shall have elapsed prior to his decease, and after the completion of such three calendar months, if any, next and immediately preceding that event, or, as the case shall require, after the death of the said A. B., to be paid to the executors, administrators, or assigns of the said C. B., within ten days after the death of the said A. B.

TITLE VI.

OF USES.

I. And it is hereby agreed and declared, between and by the parties to these presents, that the direction, limitation, and appointment, grant, release, and confirmation hereinbefore contained, and hereby respectively made as aforesaid, shall operate and enure To such uses &c.

Declaration where appointment and release are to the same uses.

II. And it is hereby agreed and declared, by and between the said parties to these presents, as far as they respectively are interested, that the release firstly hereinbefore contained, and all other assurances as aforesaid, and also the release or other assurance lastly hereinbefore contained, shall respectively be and enure, And that all and singular the manors &c. mentioned and comprised in the several schedules to these presents, or in the body of these presents, and hereby respectively released or otherwise assured, or intended so to be, shall remain, continue, and be To the uses, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinafter limited, expressed, and declared of and concerning the same; that is to say &c.

Declaration where there are several releases to the same uses.

III. As to, for, or concerning one undivided moiety or equal half part of the said hereditaments, To the use of the said A. B., his heirs and assigns, for ever; And as to, for, or concerning the other undivided moiety or equal half part of the said hereditaments, To such uses &c. (*a*).

Mode of separating particular shares.

(*a*) When both take the fee as tenants in common, without a power of appointment, say,—

"unto and to the use of the said A. B. and C. D., their heirs and assigns respectively, as tenants in common, and not as joint tenants."

Another form.

IV. As to and concerning such and so many of the said shares, parts, and proportions hereby released, or intended so to be, as are equal to one undivided moiety or half part of and in the entirety of the said messuages &c., (being the moiety or half part conveyed and assured to the said A. B., his heirs and assigns, as aforesaid), To the use &c.; And as to and concerning such and so many of the said shares, parts, and proportions hereby released, or intended so to be, of and in the said messuages &c., as shall remain after setting apart the said moiety or half part of the entirety, to answer and be subject to the uses hereinbefore declared thereof, To the use &c.

To such uses as purchaser shall appoint, and in default of appointment, to him in fee.

V. To such uses, upon such trusts, and to and for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said A. B. shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of, and to be attested by two or more credible witnesses, from time to time direct, limit, or appoint, and for default of and until such direction, limitation, or appointment, and so far as every or any such direction, limitation, or appointment shall not extend, To the use of the said A. B. and his assigns, during his life, without impeachment of waste; and after the determination of that estate, by forfeiture or otherwise, in his lifetime, To the use of the said C. D. and his heirs, during the life of the said A. B., In trust for him the said A. B. and his assigns, during his life, [and to prevent any wife of the said A. B. from becoming entitled to dower out of or in the said premises, or any part thereof]; and after the decease of the said A. B., To the use of the heirs and assigns of the said A. B. for ever (*a*).

(*a*) It will be observed, that, in the above Form, there are four limitations, each of which deserves attention:

1. By means of the power of appointment, which is in fact a use executory, the purchaser is enabled, without the concurrence of the trustee, to convey, in effect, the fee; or, in other words, to limit the use; which limitation operates under the seisin, not of the appointor, but of the

VI. To the use of such person or persons, for such estate or estates, interest or interests, (whether by way of annuity, rent-charge, or otherwise) (*a*), in such parts, shares, and

Another form.

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grantee in the conveyance which conferred the power. The consequence is, that the appointee takes the estate as if it had been expressly limited to him in such conveyance. He claims, not under, but paramount the appointor—not in the per, but in the post. A further consequence is, that the appointment supersedes the judgments suffered by the appointor. *Doe* v. *Jones*, 10 Barn. & Cr. 463; *Tunstall* v. *Trappes*, 3 Sim. 301; *Eaton* v. *Sanxter*, 6 Sim. 517. And if an inchoate title to dower had attached, this would in like manner have been defeated. Butler's Co. Litt. 216 a. note. Unless required by the power, the appointment need not be attended with the forms or ceremonies required in conveyances of the inheritance: a mere instrument in writing is sufficient. Ibid.

Sometimes a power of disposing by *will* is given; but this is both useless and objectionable; useless, because what can be done through the medium of such a power can be equally effected under the seisin in fee—and objectionable, because it may occasion a question, particularly when there is a devise to trustees, with a declaration of uses, whether the will operates as an appointment of the use, or as a devise of the land; and thus make it doubtful in whom the legal estate is vested. Butler's Fearne, p. 347, note.

2. By limiting the use to the purchaser for life, he acquires a present legal right to the possession and to the rents, &c.

3. The intervening estate of freehold given to the trustee for the life of the purchaser has the effect of keeping the purchaser's estate for life distinct from the inheritance; and thus, under the old law, prevents the attachment of any title of dower. With reference to the dower of any woman married on or before the 1st of January, 1834, this is still an important limitation. Vide stat. 3 & 4 Will. 4, c. 106, s. 14, printed at length in Vol. I. book i. Appendix, p. 265.

4. By the ultimate limitation the legal fee is vested in the purchaser; so that if he die without having made any appointment, the inheritance will vest either in his devisees or heirs, accordingly as he dies testate or intestate, unaffected by any title of dower, and without any estate in the trustee, whose interest determines with the life of the purchaser. With regard to the ultimate limitation, Mr. Butler observes, that, as a life estate is first limited to the purchaser, it seems more accurate to limit the fee to his heirs and assigns, and not to the party himself, his heirs and assigns. This, however, is a mere verbal criticism, as both limitations have exactly the same legal effect. Butler's Fearne, p. 347, note.

(*a*) It has been doubted whether a rent-charge, or the like, out of an estate, could at law be limited under a general power to appoint "estates

proportions, and upon such trusts, and charged and chargeable in such manner, and either absolutely or conditionally, and subject to such powers of revocation and of new appointment, and other powers, provisoes, conditions, declarations, and agreements, as the said A. B., by any deed or deeds, to be sealed and delivered by him in the presence of one or more credible witness or witnesses, and attested by the same witness or witnesses, shall from time to time direct, limit, or appoint; and in default of such direction, limitation, or appointment, and in the meantime, and from time to time, until the same shall take effect, and from time to time, subject to such uses, estates, trusts, charges, and interests, as shall have been directed, limited, or appointed by the said A. B., To the use of the said A. B. and his assigns, for and during the term of his natural life; and from and after the determination of that estate by any means, To the use of the said C. D. and his heirs, during the natural life of the said A. B., Upon trust for and for the sole benefit of the said A. B. and his assigns, [and to the intent that the present or any future wife of the said A. B. may not be entitled to dower]; and from and after the determination of that estate, To the use of the said A. B., his heirs and assigns, for ever.

Another form. (Short).

VII. To such uses as the said A. B. shall from time to time appoint, by any deed or deeds; and in default of such appointment from time to time, and subject thereto, To the use of the said A. B., during his life; and after the determination of that estate, then To the use of the said C. D. and his heirs, during the life of the said A. B., In trust for

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and interests" only. See *Browne* v. *Taylor*, Cro. Car. 38; sed vide *Earl of Bath's case*, 3 Ch. Ca. 55. Accordingly, the power is often made expressly to embrace that object. "There is, however," says Sir E. Sugden, "no magic in words. *Estate or estates* mean quantity of interest, and a rent-charge is clearly a portion of the entire interest in the land. Such a determination, therefore, would be authorized, as well by the spirit, as the words of the power. In *Browne* v. *Taylor* the words were strongly in favour of the power to limit a rent, and Croke, Justice, was of that opinion. It seems clear that, in a similar case, the courts would at this day decide that a legal rent might be limited under the power." Sugd. Pow. i. 514.

him and his assigns; and after the determination of those estates, To the use of the said A. B., his heirs and assigns, for ever.

To such uses as two shall jointly appoint, and in default, to trustee in fee.

VIII. To such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements, as the said A. B. and C. D. jointly shall, at any time or times, and from time to time, by any deed or deeds, with or without power of revocation, to be by them legally executed (*a*), direct, limit, or appoint; and in default of and until such direction, limitation, or appointment, and so far as any such direction, limitation, or appointment shall not extend, then to the use of the said E. F., his heirs and assigns, for ever; Nevertheless, upon the trusts &c. (Vide tit. TRUSTS).

Limitation by way of use of a rent-charge, with powers of distress and entry.

IX. To the use, intent, and purpose that the said A. B., his intended wife, in case she shall survive the said C. D., and her assigns, shall and may from time to time, after the decease of the said C. D., yearly have, receive, take, and enjoy, for and during the term of her life, one annual sum or yearly rent-charge of £—— of lawful money of Great Britain, to be charged and chargeable upon and yearly issuing and payable out of the manors and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and to be paid to the said A. B. and her assigns, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, by four even and equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, without making any deduction or abatement whatsoever out of the same or any part thereof, for or on account or in respect of any taxes, charges, rates, assessments, or im-

(*a*) Vide Butler's Fearne, p. 347, note. "It is apprehended," says Butler, "that no good reason can be assigned for requiring any specified number of witnesses to the execution of the deed by which the power is executed; it seems, therefore," he adds, "sufficient to require that the deed shall be legally executed."

positions whatsoever, either already taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed on the said manors and other hereditaments, or any of them, or any part thereof, or on the said annual sum or yearly rent-charge of £——, or any part thereof, or on the said A. B. or her assigns, or any other person or persons for or in respect of the same, by authority of parliament or otherwise howsoever, or for or on account or in respect of any other matter, cause, or thing whatsoever, [save and except the property tax]; the first quarterly payment of the said annual sum or yearly rent-charge of £—— to be made on such of the said days of payment as shall happen next after the decease of the said C. D.; And to and for this further use, intent, and purpose, that in case the said annual sum or yearly rent-charge of £——, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days next after any of the days hereinbefore appointed for the payment thereof, then and so often as it shall so happen, it shall be lawful to and for the said A. B. and her assigns, during the term of her life, into and upon the said manors and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, to enter and distrain, and the distress and distresses then and there found to take, lead, drive, carry away, and impound, and in pound to detain and keep until the said annual sum or yearly rent-charge of £——, and all arrears so unpaid, together with all costs, charges, and expenses occasioned by reason of the non-payment thereof, and incurred by taking and keeping such distress and distresses, shall be fully paid and satisfied; And in default of payment thereof, or any part thereof respectively, in due time after such distress or distresses shall be taken, to appraise, sell, and dispose of, or cause to be appraised, sold, and disposed of, such distress or distresses, or otherwise to act therein according to due course of law in like manner as in cases of distress for rent reserved upon common leases; To the intent that the said A. B. and her assigns shall and may be fully paid and satisfied the said annual sum or yearly rent-charge of £——, and all arrears thereof, and all costs, charges, and expenses

attending the nonpayment and recovery of the same; And to this further use, intent, and purpose, that in case the said annual sum or yearly rent-charge of £—— shall at any time or times be in arrear or unpaid by the space of forty days next after any one of the said days hereinbefore mentioned, and appointed for payment of the same, then and from thenceforth, and so often from time to time, although no legal or formal demand shall be made of the said annual sum or yearly rent-charge of £——, or the arrears thereof, it shall and may be lawful to and for the said A. B. and her assigns, during the term of her life, to enter into and upon, and take possession of all and singular the said manors and premises hereinbefore granted and released, or any part or parts thereof, and the same to have, hold, occupy, possess, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to have, receive, and take, to and for her and their proper use and benefit, until she and they shall therewith and thereby or otherwise be fully paid and satisfied the said annual sum or yearly rent-charge of £——, and all arrears thereof, and all such arrears of the same as shall grow due or incur during the time which she or they shall by virtue of such entry or entries be in possession of the said manors and other hereditaments, or any part thereof, together with all costs, charges, and expenses whatsoever attending or to be occasioned by the non-payment or recovery of the same, or any part thereof, or in relation thereunto, and such possession when taken to be without impeachment of waste; And it is hereby agreed and declared, between and by the said parties to these presents, that if the said A. B. shall depart this life on any other day than one of the said quarterly days of payment, a proportionate part of the said annual sum or yearly rent-charge of £—— shall be paid to the executors, administrators, or assigns of the said A. B., immediately after her decease, for or in respect of the days which she the said A. B. shall have lived of the then current quarter of a year; And it is hereby also agreed and declared, between and by the said parties to these presents, that the said annual sum or yearly rent-charge of £—— is hereby granted to the said A. B., and she

the said A. B. doth hereby accept the same as her jointure (*a*).

On the creation of a small rent for owelty. (Short form).

X. To the use, that the said A. B., his heirs and assigns, shall and may thereout yearly, for ever, on the —— day of —— in every year, have and take one yearly rent-charge of £——, clear of all deductions for taxes, and with the same or the like remedies and powers of distress, and the sale of such distress, as if the said annual sum of £—— was a rent reserved on a lease for years; and subject thereto, To the use, &c.

Limitation of powers of dis-

XI. To the use, intent, and purpose (*b*) that as between

(*a*) Before the stat. 3 & 4 W. 4, c. 106, came into operation, it was usual to add, — "And in lieu of all dower and thirds and freebench to which she the said A. B., either at the common law, by custom, or otherwise, may or otherwise might be entitled out of or in any lands or other hereditaments of or to which he the said C. D. may be seised or entitled during the said intended coverture, for an estate of freehold and inheritance." These words are now no longer necessary. Vide tit. PROVISOES AND DECLARATIONS.

(*b*) Upon the sale of lands in lots subject to a fee-farm rent chargeable on the whole, it was stipulated that the purchaser of one particular lot should be liable to the whole rent. The design of the above was to effect that object. The recitals were as follows :—

"And whereas all and singular the messuages &c., comprised in the said in part recited indentures of &c., are subject to an annual sum or yearly rent-charge of £——, payable out of the same, to the heirs or assigns of &c.; And whereas the said A. B. did at a public auction, by &c., at &c., contract &c., purchase the messuages &c., at or for the price or sum of £——; And it was agreed by the terms of the said auction that the messuages &c., sold to the said A. B., should be chargeable with the whole of the said rent-charge of £——, and that for indemnifying the purchasers or owners of the residue of the lands chargeable with the said rent-charge of £——, from the payment of the same rent-charge, and all costs, charges, damages, and expenses on account thereof, the said messuages &c., sold to the said A. B. as aforesaid, should be subjected to the charges and powers of distress hereinafter contained."

the person or persons who for the time being shall be seised thereof, or entitled thereto, and the person or persons who for the time being shall be entitled to all or any part of the said messuages &c., hereby released &c., the said messuages &c., in the possession of the said A. B., may for ever hereafter be solely, and exclusively of the said other messuages &c., charged with and subject and liable to the future payments of the whole of the said annuity or yearly rent of £——, and be a protection or indemnity to the said other hereditaments against the payment thereof; For which end it is hereby agreed and declared, that if the said annuity or yearly sum of £—— shall at any time or times hereafter be in arrear and unpaid, and thereby, or by reason or means thereof, or by reason or means of any other matter, cause, or thing in any wise relating thereto, any entry or distress for the said annuity or yearly sum of £—— shall be made upon any of the said hereditaments now charged with the payment thereof, other than or besides the hereditaments hereby intended to be charged with the payment of the same exclusively, and by way of indemnity, as hereinbefore is mentioned, or any sum or sums of money really due for the arrears of the said annuity or yearly sum of £——, shall be paid by the said C. D., his heirs, executors, or administrators, or by the said E. F. and G. H., their heirs, executors, or administrators, voluntarily, to prevent or avoid any such entry or entries, distress or distresses, then and in such case, so often as the same shall happen, it shall and may be lawful to and for the said C. D., his heirs and assigns, and also to and for the said E. F. and G. H., their heirs and assigns, or other the person or persons seised of or entitled to the whole or any part of the hereditaments upon which such distress or entry shall be made as hereinbefore is mentioned, or in respect of which such voluntary payment shall be made, (he and they first making a lawful demand thereof), from time to time to enter into and distrain upon the said messuages, hereditaments, and premises hereby intended to be solely charged with the said annuity or yearly sum of £——, by way of indemnity, as hereinbefore is mentioned, for all such sum or sums of money, costs, charges, and expenses, as they the said &c., or other the person or persons so seised or entitled as aforesaid, shall

tress, &c. on particular lands, by way of indemnity to purchasers of other lands also charged with a similar annuity, whose lands are to be exonerated.

pay, sustain, or be put unto by reason or means or in consequence of any such entry or entries, distress or distresses, or voluntary payment to avoid such entry or entries, distress or distresses; And that when and so often as any such entry or distress shall be so made by the said C. D., his heirs or assigns, or by the said E. F. and G. H., their heirs or assigns, or other the person or persons so seised or entitled as aforesaid, it shall and may be lawful to and for them or him so making the same, to take, drive, carry away, and impound, and in pound to detain and keep the said distress and distresses, and to sell and dispose of the same, or otherwise to demean therein according to law, and in like manner as in distresses taken for rents reserved upon common demises or leases for years; To the end and intent, and so that all and every the person or persons who now are or hereafter shall or may be entitled to any estate or interest in all or any of the said messuages and other hereditaments intended to be hereby discharged from, or indemnified and protected against the said annuity or yearly sum of £——, may by the ways and means hereinbefore mentioned be fully discharged from, or protected and indemnified against the same, and be fully reprised and reimbursed, satisfied and paid, all sums of money, costs, charges, and expenses, which they or he shall so pay or sustain, or be put unto as aforesaid; And as to the said messuages &c. hereinbefore mentioned, and intended to be hereby charged with the said annuity or yearly payment of £——, by way of indemnity or protection as hereinbefore is named, it is hereby agreed, that subject and charged as hereinbefore is mentioned, the same shall be and remain To the use of the said A. B., his heirs and assigns, for ever.

When lands conveyed are to be subject to an annuity in common with other lands charged therewith.

XII. And it is hereby directed, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, that the appointment, and also the release hereinbefore contained, shall severally operate and enure to the use, intent, and purpose, that the same messuage, lands, &c. may together and rateably, or in common with the other messuages, lands, &c. already charged or chargeable with the said annuity or yearly rent charge of

£——, be charged or chargeable with the same annuity or yearly rent-charge during the continuance thereof; And to this further use, intent, and purpose, that &c. (Vide tit. USES).

To the use of mortgagee for term of years, and, subject thereto, to such uses as mortgagor shall appoint.

XIII. Unto the said A. B. and his heirs; Nevertheless to the uses, upon the trusts, and for the ends, intents, and purposes hereinafter declared and expressed concerning the same; (that is to say,) to the use of the said C. D., his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the full term or time of 1000 years thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste; subject nevertheless to the proviso or agreement for redemption hereinafter contained; And from and after the expiration or other sooner determination of the said term of 1000 years, and also in the meantime subject thereto, To the use of such person or persons, for such estate or estates, &c. (Vide Art. IV.)

When a wife joins in a mortgage for years, and the fee is limited to the husband.

XIV. To the use of the said A. B., his heirs and assigns for ever, and so that the said C. B. may remain dowable, and so that the said term of 500 years may not be used to prevent or bar her remedy for dower at law or in equity other than and except as a security for the said sum of £——, and the interest for that sum (*a*).

(*a*) The above was the usual Form when a wife joined in a fine for releasing her title to dower, quoad the mortgage; and it is equally applicable to the case of one who, having married on or before the 1st of January, 1834, (vide stat. 3 & 4 W. 4, c. 105, s. 14), joins in a deed of disposition under the enabling clause of the 3 & 4 W. 4, c. 74, s. 77. By that statute it is enacted, that "after the 31st December, 1833, it shall be lawful for every married woman, in every case except that of being tenant in tail, for which provision is already made by this act, by deed to dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and also to dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right may have in any lands of any tenure, or in any such money as aforesaid, and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any lands of any

To one in fee discharged from dower.

XV. Unto and to the use of the said A. B., his heirs and assigns for ever, discharged of and from all dower, right and title of dower, or other estates and interests (if any) of the said C. D. therein.

When purchase-money is applied in part satisfaction of a mortgage debt, or is applied contrary to the priority with consent.

XVI. And discharged as against the said A. B., his executors, administrators, and assigns, of and from all right and remedy or power of the said C. D., his executors, administrators, or assigns, either by himself or themselves, or by his or their trustee or trustees, to enforce from the said A. B., his executors, administrators, or assigns, or the lands and hereditaments hereby assured, the payment of all or any part of the sum of £——, the residue of the said sum of £——, and the interest due and to become due for or in respect of that sum; but it is hereby expressly declared by and between all the parties to these presents, that nothing herein contained shall be construed to affect or prejudice the right of the said C. D., his executors, administrators, or assigns, to be or to be considered a creditor or creditors for £——, the residue of the said sum of £——, or to have the same sum of £—— a contingent and subsisting charge on the said term of —— years in the residue of the said messuage &c. comprised in the said term of —— years, and not sold to the said A. B., any thing hereinbefore contained to the contrary thereof notwithstanding.

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tenure, or any such money as aforesaid, or in regard to any estate in any lands of any tenure, or in any such money as aforesaid, as fully and effectually as she could do if she were a feme sole; save and except that no such disposition, release, surrender, or extinguishment shall be valid and effectual unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed: provided always, that this act shall not extend to lands held by copy of court-roll, of or to which a married woman, or she and her husband in her right, may be seised and entitled for an estate at law, in any case in which any of the objects to be effected by this clause could before the passing of this act have been effected by her, in concurrence with her husband, by surrender into the hands of the lord of the manor of which the lands may be parcel."

If it be intended absolutely to extinguish the title to dower, an express declaration of such intention ought to be inserted in the deed; otherwise a question might arise whether the dower was absolutely or partially extinguished.

XVII. To such uses, upon such trusts, and for such ends, intents, and purposes as by the said hereinbefore in part recited indenture of release are limited, expressed, and declared of and concerning the said manors &c., after and subject to the estate thereby limited to the use of the said A. B. for his life, or such and so many &c.

By way of reference to the uses of a deed recited.

XVIII. To the uses, upon the trusts, and for the ends, intents, and purposes, and subject to the annuities, legacies, and charges to which the same would now be subject, under or by virtue or means of the said hereinbefore in part recited last will and testament of the said A. B., deceased, in case the said A. B., deceased, had been seised thereof at the date and publication of his said hereinbefore in part recited last will and testament, and for the purposes of giving full and legal effect to the same last will and testament.

By reference to the uses of a will, as if testator had been seised at the date thereof, for confirming the same.

XIX. To the use of the said A. B., and the heirs male of his body lawfully issuing, and for want of such issue, Then to the use of such person or persons as under and by virtue or means of the said hereinbefore in part recited will of the said C. D., and the power of appointment thereby limited to the said C. D., and the exercise of the said power by the said C. D., would after the death of the said A. B., and failure of his issue male, have been entitled to the said messuage &c. purchased by or vested in the said Mayor and Commonalty and citizens of London as aforesaid, in case the same messuage, &c. had not been purchased by or vested in the said Mayor and Commonalty and citizens, and for such and the same, or the like estates, charges, and interests, and under and subject to such and the same or the like powers as he, she, and they respectively would have been entitled to the same, or as near thereto as the deaths of parties, the change of interests, and other intervening circumstances will admit, and to no other use, and for no other end, intent, or purpose whatsoever.

By reference to uses declared of other lands in a will, or which should be created by exercise of power of appointment contained in that will.

XX. To such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the same would have

By reference in conveyance to trustees of a will.

stood limited, settled, and assured, under or by virtue or means of the said recited will and testament of the said A. B., the testator, and codicil thereto, and appointment made by the said C. D., in pursuance and part exercise of her said power, if the said A. B., the testator, had been legally seised of the same parts or shares, for an estate in fee simple, at the date of his said hereinbefore recited will and codicil thereto, and each of them respectively, or to, upon, and for, and with, under, and subject to such and so many of the same uses, trusts, intents and purposes, powers, provisoes, agreements, and declarations, as are now subsisting undetermined or capable of taking effect.

As estates would have stood legally limited, in case allotments had been vested at the execution of certain indentures, and for establishing subsequent conveyances.

XXI. Nevertheless, to the same or the like uses, upon the same or the like trusts, and for the same or the like ends, intents, and purposes, and under and subject to the same or the like powers, provisoes, limitations, declarations, and agreements, as the said allotments, lands, and premises would have stood legally limited, settled, and assured, at the time of the execution of these presents, in case the same allotments, lands, and premises had been legally vested in the said A. B. at the date and execution of the said hereinbefore in part recited indenture, bearing date &c., and had been thereby bargained, sold, or reconveyed, unto and to the use of the said C. D., his heirs and assigns, and so as to give effect to and establish and confirm all subsequent conveyances and assurances thereof, if any, made by the said C. D., and to no other use, and to no other trust, nor for any other end, intent, or purpose whatsoever.

As estates would have stood, if conveyed to testator at the date of his will.

XXII. To the uses, and for the ends, intents, and purposes hereinafter limited, expressed, mentioned, declared, or referred to, of or concerning the same; that is to say, To the use of such person and persons, and for such estate and estates, and to and for such ends, intents, and purposes, and with, under, and subject to such charges, payments, powers, provisoes, conditions, restrictions, limitations, and conditions, as under and by virtue of the said hereinbefore recited last will and testament of the said A. B., the testator, and the devises, bequests, limitations, and directions therein ex-

pressed and contained, or by descent from him, or otherwise the same premises, or any part thereof respectively, would now have been held, continued, remained, or stood limited or subject to, in case the same premises had been actually conveyed to and to the use of the said A. B., the testator, his heirs and assigns, before the date and execution of his said will, and had been completely, legally, and effectually vested in him in fee simple at the time of his making and executing his said will (*a*).

To such uses as hereditaments would now stand limited under or by means of another recited indenture, if that indenture had been valid, and properly stamped

XXIII. Nevertheless to the uses, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, limitations, annuities, charges, declarations, and agreements hereinbefore recited of and concerning the same, or as near thereto as may be, and as the deaths of parties, the change of interest, and other intervening circumstances will admit, and so and in such manner that the same messuage, lands, and hereditaments, may henceforth remain, continue, and be to such and the same or the like uses, and upon such and the same or the like trusts, and to and for such and the same or the like ends, intents, and purposes, and under and subject to such and the same or the like powers, provisoes, annuities, charges, limitations, declarations, and agreements, as the same messuage and other hereditaments respectively would respectively have stood limited, settled, and assured at the time of the execution of these

(*a*) This Form was settled by Mr. Fearne. In answer to an inquiry as to the object of inserting the additional words of reference in case the testator had been seised to him and his heirs at the time of making his will, Mr. Fearne observed, "The words alluded to are inserted, not on behalf of the purchasers, but by way of caution on the part of the parties, and to prevent their taking upon themselves to do more than they ought to do, which they would appear in strictness to do were they to convey absolutely and merely to the uses of the will, unless that will were proved and established in Chancery, and they directed by the Court to convey to the uses thereof. They can only be required to convey to such uses as now under the will or otherwise would have subsisted in regard to the estates if the testator had been seised thereof at the time of his will, without taking for granted, or confining themselves to, the validity or operation of that will."—MS.

presents, under or by virtue or means of the said hereinbefore in part recited indenture, as the same is recited in these presents, in case the conveyance thereby made or intended to be made had been a valid conveyance, and duly stamped; And for the purpose of giving full and complete effect to the same indenture, as recited in these presents, without any further production of the same indenture, and so also as to give effect to and establish and confirm all subsequent conveyances, acts, and assurances which have been made of the same messuage, lands, and hereditaments, since the execution of the same indenture by the persons who have been or were intended to be interested in or entitled under the same indenture; and to no other use, and upon no other trust, and for no other end, intent, or purpose whatsoever.

Reference to uses in marriage articles, in a settlement by indorsement thereon.

XXIV. To the several uses, upon the several trusts, and for the several ends, intents, and purposes, and under and subject to the several charges, powers, provisoes, limitations, declarations, and agreements, (and among them the provisions for the change and indemnity of trustees), which in or by the within-written indenture were covenanted, directed, or agreed to be limited, expressed, and declared of and concerning the same, or to, for, upon, under, or subject to such and so many of the same uses, trusts, ends, intents, and purposes, charges, powers, provisoes, limitations, declarations, and agreements, as are now existing undetermined, or capable of taking effect.

In conveyance to one for life, unless marriage solemnized, remainder to another in fee.

XXV. To the uses, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, limitations, declarations, and agreements hereinafter limited, expressed, and declared concerning the same; (that is to say,) in the mean time, and until the solemnization of the said intended marriage, To the use of the said A. B. and her assigns, for and during the term of her natural life; and from and immediately after the determination of that estate, To the use of the said C. D., his heirs and assigns for ever; and from and immediately after the solemnization of the said intended marriage, To the use &c.

By reference to those of a will.

XXVI. To such uses, upon such trusts, and for such intents and purposes, and subject to such powers and provisoes as by the said hereinbefore in part recited will of the said A. B., the testator, were limited, declared, or expressed concerning his said manors, hereditaments, and premises, first thereby given and devised, or as near thereto as the deaths of persons and other contingencies will now admit, and according to the true intent and meaning of the directions in that behalf contained in the said will of the said A. B., the testator.

By reference, to give effect to intermediate conveyance by attorney.

XXVII. To the uses, upon the trusts, and for the ends, intents, and purposes hereinafter expressed and declared concerning the same; (that is to say,) To such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such provisoes, limitations, powers, and agreements as the same closes and hereditaments respectively would have stood limited at the time of the execution of these presents, in case the said hereinbefore mentioned indentures of lease and release, bearing date respectively on or about the &c. now instant, had been executed by the said A. B., in person at the same time that they were executed by the said C. D., and in the same manner as if the said indentures had been executed by the said A. B. in person, instead of having been executed by the said C. D. as his attorney, and for the purpose of confirming, establishing, and giving effect to any title, uses, estates, and interests derived or intended to be derived under or by means of the same indentures of lease and release.

By reference, in confirmation of an exchange.

XXVIII. To such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, charges, declarations, directions, and provisions, as (*a*) the same would have stood limited in case the

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(*a*) On reconveyance by mortgagee to trustees of mortgagor's will, say,—

" Are or are expressed to be declared thereof in or by the said recited last will and testament of the said A. B., or by

same had been comprised in and effectually devised by the said hereinbefore in part recited will and testament, and codicil thereto, of the said A. B., the testator, instead of the messuage, lands, and hereditaments, which upon the said exchange were allotted to or for the said C. D., or in lieu of the closes, pieces, and parcels of land and hereditaments hereby released or otherwise assured, or intended so to be, or to so much and so many of the same uses, upon such and so many of the same trusts, and for such and so many of the same ends, intents, and purposes, and under and subject to such and so many of the same powers, provisoes, charges, declarations, and provisions, as are now existing undetermined, and capable of taking effect, and in confirmation of and for the purpose of giving effect to the exchange or allotment made or intended to be made as aforesaid.

In confirmation of a mortgage, and subject thereto, &c.

XXIX. To the use of the said A. B., his executors, administrators, and assigns, for and during the said term of 500 years, or the residue thereof, in confirmation, and for the purpose of giving more full and complete effect to the same term; Subject nevertheless to the proviso or agreement for redemption hereinafter contained; and from and after the expiration or other sooner determination of the same term, and in the meantime subject thereto, and to the proviso or agreement for redemption hereinafter contained, To the use &c.

By reference, as if lands had been at the date of prior conveyance held and conveyed for an estate in fee simple in possession.

XXX. To such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, charges, declarations, and agreements, as the same messuages, farms, lands, tenements, and hereditaments respectively would respectively now stand limited, settled, and assured, in case the said A. B. had been seised thereof for an estate in fee simple in possession at the date of the conveyances made thereof respectively by him on the sales and exchanges thereof

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any appointment or appointments made under or by virtue of or pursuant to all or any of the powers contained in the same will, or to such &c."

respectively, and he had conveyed the same respectively for such estate in fee simple, by the deeds containing the conveyances made on such sales and exchanges respectively, in confirmation of and for the purpose of giving effect at law and in equity to the same sales and exchanges respectively, and the conveyances made thereon respectively, and to all estates, titles, and interests, wills, and dispositions depending for effect on the conveyances so made by the said A. B., discharged of and from the estate tail of the said A. B., and all claims and demands under that estate, and to no other use, and upon no other trust, nor for any other end, intent, or purpose whatsoever (*a*).

For confirming the title to lands, part whereof had been sold under a defective appointment to different purchasers, and as to residue unsold, to uses as owner shall appoint, and afterwards to him in fee, subject to exchanges or agreements for exchanges.

XXXI. As to and concerning such and so many and such parts of the said messuages, tenements, lands, and hereditaments as have been sold by the said A. B., and as have been or are expressed to have been conveyed to, or to the use of, or in trust for the purchaser or purchasers of the same, with their and every of their appurtenances, To the use of the person or persons who, under or by virtue or means of the conveyance or conveyances made to or to the use of, or in trust for the said purchaser or purchasers respectively, would at the time of &c. be seised or possessed of, or interested in or entitled to the same messuages &c., and parts and shares of messuages &c., in case the said recited appointment made in favour of &c. had in all respects been a good and effectual appointment, and for such estate or estates, interest or interests at law and in equity, and in such parts, shares, and proportions, with, under, and subject to such charges, powers, provisoes, declarations, and agreements, as he, she, or they respectively would in that case have been entitled to the same, in confirmation and for the purpose of giving effect to the said hereinbefore recited appointment, made in favour of &c., and all estates, titles, and interests, wills and dispositions, depending for effect on the validity of the same ap-

(*a*) This was a declaration of the uses of a fine by a tenant in tail, who had conveyed parts of the land under an idea that he was tenant in fee. The above was therefore to remedy the defect as to the lands sold; and as to the lands unsold, the uses were declared for the owner in fee.

pointment. And as to all the residue of the said messuages &c., and every part and parcel of the same, with their and every of their rights, members, and appurtenances, To such uses, upon such trusts, and for such ends, intents, and purposes, as the said A. B. hath declared or shall declare thereof, either by particular description or by general words, as his own absolute property, in or by his last will and testament in writing, duly executed and attested, or to be duly executed and attested, or by any codicil or codicils thereto, also duly executed and attested, or to be duly executed and attested; And subject to such dispositions as aforesaid as are or shall be made thereof by the said A. B., and in the meantime, till the same will or wills, codicil or codicils, shall take effect, and with full power of revoking or altering the same will or wills, codicil or codicils, To the use of the said A. B., his heirs and assigns, for ever; Nevertheless, as to such and so many of the said lands and hereditaments as were given by or taken from the said A. B., upon any private contract or agreement for an exchange or exchanges, subject to the exchange or exchanges thereby made, and all agreements concerning the same exchange or exchanges, and all benefit and equity by reason thereof.

By reference, as if testator had been legally seised at the time of his decease.

XXXII. To such uses &c. as the same messuages &c. would now respectively have stood limited, settled, and assured, in case the said A. B. had been legally seised thereof for an estate in fee simple in possession at the time of his death, in confirmation of &c., and for the purpose of giving effect to the dispositions made by the person or persons who for the time being hath or have been the equitable owner or owners of the same messuages &c., according to his, her, and their respective estate and interest therein, and to no other use, or upon no other trust, nor for any other end, intent, or purpose whatsoever.

Uses by reference to uses to which estates would have stood limited, if A. B. and C. D., instead of having the legal es-

XXXIII. To such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements as the messuages, hereby released or otherwise assured &c., would have stood limited, settled, and assured, at the time

of the execution of these presents, in case the said A. B. and C. D., instead of having the said legal estate as a continuing interest by virtue of the hereinbefore in part recited will of the said E. F. deceased, had been merely devisees to the uses and trusts declared by the will of the said E. F., and the same uses and trusts had been executed by the statute for transferring uses into possession, or as near thereto as may be, and the circumstances of the case and the rules of law will admit, and to no other use, upon no other trust, and for no other end, intent, or purpose whatsoever.

tate by virtue of recited will, had been merely devisees to the uses and trusts of the will.

XXXIV. To such uses, and for such estates, and under and subject to such powers, provisoes, agreements, and declarations as the same messuages &c. would have stood limited, settled, and assured, under or by virtue or means of the within-written indenture, if the said A. B. had been named in the same indenture as a trustee, in the place or stead of the said C. D., for all the purposes for which the said C. D., either alone or jointly with any other person or persons, was to be a trustee under or by virtue or means of the same indenture, or as near thereto as may be, and the nature of the case, the deaths of parties, excepting the said C. D., and the circumstances of the case will admit, and to no other use, and upon no other trust, and for no other end, intent, or purpose whatsoever.

In conveyance to new trustee and old trustee.

XXXV. To the uses, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, and charged and chargeable with such sums of money, and with such limitations over, to, for, with, under, and subject to which the said messuages &c. hereinbefore mentioned would, under and by virtue of the said indenture of release and settlement, stand and be limited, subject, and liable to, in case these presents had not been made or executed, and the names of the said A. B. and C. D. had in the said indentures of release and settlement been inserted instead of the names of the said E. F. and G. H., and the said messuages &c. had been thereby conveyed and assured unto the said A. B. and

By reference, as declared by settlement, and as if lease and release had not been made, and in order to change trustees.

C. D., and their heirs, instead of being thereby conveyed unto the said E. F. and G. H., and their heirs, and the estate, trust, powers, and authorities which by the said indenture of release were given or limited to the said E. F. and G. H., and their heirs, or to the said J. K., and the survivor of them, and his heirs, had by the said indenture of release been limited or given to the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor; And to, for, or upon no other use, trust, intent, or purpose whatsoever.

Limitation for the revival of a term.

XXXVI. To the uses, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared of and concerning the same; and so and in such manner that the said closes &c. may remain, continue, and be to the said A. B., his executors, administrators, and assigns, for and during all the residue of the said term of &c., whether the same term be or be not subsisting, and so that the same term, if extinguished, may be revived in manner hereinafter mentioned.

To corroborate estate and powers of tenant for life in possession, and to make said tenant dispunishable for waste as to timber, and to corroborate all his estates prior to those of reversion in fee.

XXXVII. To the use, intent, and purpose of corroborating, strengthening, and confirming the estate of the said A. B. for his life, in all the said last-mentioned manors &c., and all powers and privileges annexed to that estate, and all estates and interests limited or to be limited under and in pursuance of such powers and privileges, or any or either of them; And to the further use, intent, and purpose, that the estate of the said A. B. may, as to and against the said C. D., his heirs and assigns, and all persons claiming under him or them, be dispunishable or not answerable or accountable, in any manner howsoever, for any waste which the said A. B. may in future commit on the said last-mentioned manors &c., in respect of any timber trees growing or to grow on the same manors &c., or any of them, and for corroborating, strengthening, and confirming all other the estates and interests limited previously or antecedently to the devise or limitation to or in favour of the first son of the said E. F. deceased, or such of the same uses, trusts, ends, intents, and purposes, as are now existing or capable of taking effect;

And after the determination of the said prior estates, and in the mean time subject thereto, and to the said powers and privileges, and the estates and interests to be limited by virtue thereof, To the use of the said C. D., his heirs and assigns for ever.

Confirming a term in part of lands, and creating a similar term of the same duration, &c. in other lands.

XXXVIII. To the use of the said A. B., his executors, administrators, and assigns, for the term of one thousand years, to be computed from &c., and thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, for the purpose of creating a term of one thousand years in such and so many and such parts, if any, of the same closes &c. as are not comprised in the term of one thousand years which was limited or demised to the said A. B., his executors, administrators, and assigns, as aforesaid, and for the purpose of confirming and giving effect to the same term of one thousand years in such and so many and such parts of the same closes &c. as are comprised in that term; subject nevertheless to the proviso or agreement for redemption hereinafter contained. And from and immediately after the expiration or other sooner determination of the said term of one thousand years, hereby limited or confirmed to the use of the said A. B., his executors, administrators, and assigns, and in the meantime subject thereto, &c.

Confirming the estate for life of a jointress, and the powers annexed to the same.

XXXIX. In the first place, to corroborate and confirm the said use or estate, which by the said recited indenture of &c., was limited of and in the said premises to the said A. B. for her life, and also all powers, remedies, and other provisoes annexed to the same estate, or contained in the same indenture for her benefit; and subject thereto, &c.

Confirming mortgage term.

XL. In the first place, in confirmation and for the purpose of giving effect to the said term of one thousand years, for all the residue thereof, and vesting the now residue of the said term in the said A. B., his executors, administrators, and assigns, according to the true intent and meaning of these presents: subject nevertheless to the proviso or agreement for redemption hereinbefore con-

tained; and from and after the expiration of the said term of one thousand years, and in the meantime subject thereto, To the use, &c.

Confirming leases.

XLI. In the first place, to the use, intent, and purpose to confirm all and singular the said several hereinbefore mentioned indentures of lease, made to the said A. B., and to the said C. D., and to the said E. F. respectively, and for giving continuance and effect to the terms, estates, rights, and privileges, granted by the several indentures or agreements creating such leases, according to the true intent and meaning of the same indentures; subject nevertheless, during the continuance of the same terms respectively, to the like rents, covenants, conditions, and agreements, as are reserved by or contained in the same indentures of lease respectively, as incident to the reversion and inheritance hereby released, or intended so to be, and to continue for all the period of the duration of the same leases, estates, and interests respectively; And, subject and without prejudice to the said several indentures of lease, and the terms and estates therein expressed to be thereby granted, To the use &c.

Confirmation of leases, subject to rents and covenants thereof, as incident to reversion and inheritance conveyed, and with right of way reserved by appointment.

XLII. To the use, intent, and purpose to confirm and give effect to the several leases hereinafter excepted, and all the estates, rights, powers, and privileges thereby granted, and with the like right of way and road as is hereby limited or appointed; subject nevertheless to the same or the like rents, covenants, conditions, and agreements, as are reserved by and contained in the same indentures of lease respectively, as incident to the reversion and inheritance hereby appointed, or otherwise assured, or intended so to be.

Confirmation of power of leasing, and of leases to be thereunder made, or previously made and enumerated in schedule.

XLIII. To the use &c., In confirmation of the said power of leasing, and in confirmation and for giving effect to all leases to be hereafter made under or by virtue of and pursuant to the said power, and also in confirmation and for the purpose of giving effect to the several leases mentioned or specified in the schedule hereunder written or hereunto annexed; And, subject to the same power, and to the said

leases respectively made and to be made as aforesaid, To the use &c.

In confirmation of an annuity.

XLIV. In confirmation of the said annuity or yearly sum of £——, during the life of the said A. B., and also in confirmation of the powers and remedies hereby given for enforcing the payment of the same; and subject thereto, in confirmation of the term of ninety-nine years, determinable as aforesaid, which is hereinbefore granted and demised to the said C. D., his executors, administrators, and assigns, and of the trusts declared of the same term; and afterwards, and in the mean time subject thereto, &c.

To the use of mortgagee, tenendum of the lord of the manor, on condition to be void on payment of principal and interest.

XLV. To the use of the said A. B., his heirs and assigns, to be held of the lord or lady of the said manor, by the rents and services therefore anciently due and of right accustomed, upon condition to be void on payment by the said C. D., his heirs, executors, administrators, or assigns, to the said A. B., his executors, administrators, or assigns, of the said sum of £——, with interest for the same, after the rate, in the parts, shares, and proportions, and on or at the days or times hereinbefore mentioned or appointed for payment thereof respectively.

To prevent the destruction of intervening contingent remainder on a conveyance by different tenants for life, and the reversioner with interposed contingent estates, to the children of the tenants for life.

XLVI. Unto and to the use of the said A. B., and his heirs and assigns, for and during the lives of E. F., G. H., and I. K., and the lives and life of the survivors and survivor of them, if the estate and interest of all or any one or more of the said granting and confirming parties shall so long continue; And from and after the determination of the estate or several estates hereby limited to or to the use of the said A. B., his heirs and assigns, for the lives of the said E. F., G. H., and I. K., as aforesaid, Then to and to the use of the said C. D., his heirs and assigns, for and during the lives of the said &c., and the lives and life of the survivors and survivor of them, In trust only for and for the benefit of the said A. B., his heirs and assigns; And from and after the determination of the several estates hereby limited to and to the use of the said A. B. and C. D. respectively, and their respective heirs and assigns, for the lives

of the said several persons as aforesaid, Then to and to the use of the said A. B., his heirs and assigns for ever, and for and during the several and respective estates and interests which they the said granting and confirming parties respectively have in the said manor respectively &c. hereby granted and released, or otherwise assured, or intended so to be (*a*).

Uses to extinguish power of charging lands with portions and maintenance.

XLVII. To the use and intent, in the first place, to annul, release, and destroy the said power and authority so as aforesaid reserved by the said indenture of release of &c., to the said A. B., to enable him to charge by any means the said messuages &c., hereinbefore released, for raising any sum or sums of money whatsoever, for the portions of younger children, by his present or any future wife, or for the maintenance of such children; and subject thereto, To the use &c.

For wife to take an annuity, as husband by will shall direct.

XLVIII. And to the further use, intent, and purpose, that C., wife of the said A. B., (in case she shall survive the said A. B.), shall and may, yearly and every year, during the term of her natural life, have, receive, and take such annuity or yearly sum of £——, as the said A. B., in and by his last will and testament, duly executed in the presence of two or

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(*a*) The object of these limitations is, by means of the intervening estate vested in the trustee, to prevent the union of the estates for life with the reversion in fee, and the consequent destruction of the contingent remainders which would otherwise ensue. For it is a well known rule, that "if the particular estates which support contingent remainders are not in esse when the contingency happens, the contingent estates can never arise, whether it happens by surrender, merger, or any other way." Butl. Fearne, p. 317. Now if in the above case the tenants for life and the reversioner had joined in a conveyance to A. B. in fee, the particular estates of the tenants for life, upon which the intervening contingent remainders depend, would have become consolidated with the reversion, and ceased to exist as particular estates. The consequence is obvious.

A doubt was at one time entertained whether a court of equity would compel a purchaser to accept a title depending on the destruction of contingent remainders. *Rooke* v. *Kidd*, 5 Ves. 647. Such a title has since been held to be marketable. *Hasker* v. *Sutton*, 2 Sim. & Stu. 513. On the subject glanced at in this note, see Butl. Fearne, pp. 316—350.

more credible witnesses, shall will, order, direct, or appoint, to be issuing and payable out of the said granted and released premises, at such times, and in such manner, and with such power or powers for the recovery thereof, as the said A. B., in and by his said will, shall order, direct, or appoint.

To such uses as were declared of particular lands by a particular instrument, and with like powers of jointuring and raising portions.

XLIX. And in default of such issue, to, for, and upon, and subject to the several uses, trusts, and limitations, in and by the said recited indenture of settlement, of &c., limited, of the said messuages &c., in the said county of D., to take effect after the determination of the several estates tail thereby limited to the first and other sons of the said A. B., and with such powers to make jointures and raise portions for a daughter or daughters, younger son or sons, and to make leases, as the said premises in the county of D. stood limited under and by virtue of the said recited indenture of &c.

In favour of persons answering the description of heirs at law.

L. To the use of the person or persons, who, at the death of the survivor of the said A. B. and C. D., shall be the heir or co-heirs at law of the said E. F., and the heirs and assigns of the same person or persons respectively, to be divided between the same persons, if more than one, as tenants in common, and not as joint tenants, and in the same shares and proportions (either equally or unequally) as they would have been entitled to a real estate descending from the said E. F., and vesting in them as his co-heirs.

Limitation of estate for life, without impeachment for waste, except voluntary waste, &c.

LI. To the use of the said A. B. and his assigns, for and during the term of his natural life, without impeachment for any manner of waste, other than and except voluntary waste, in houses or buildings, without rebuilding others of equal or greater value within two years, and other than and except in timber, by cutting more timber for sale in any one year than shall sell for £——, or felling any tree, except for repairs, in which there shall be less than —— feet of timber (*a*); And from and after the determination of the

(*a*) When there is a prior term for raising money by felling and selling timber, say, —

"Without impeachment of waste, so far as is consistent with the trusts of the said term of 500 years."

estate hereby limited, To the use of the said A. B., for his life as aforesaid, To the use &c.

To sons successively in tail male, with remainder to them in tail general.

LII. To the use of the first son of the said A. B. by the said C. D., his intended wife, and the heirs male of the body of such first son lawfully issuing; and on failure of such issue, To the use of the second, third, fourth, fifth, and all and every other son and sons of the said A. B. by the said C. D., his intended wife, severally and successively in remainder, one after the other, as they respectively shall be in seniority of age and priority of birth, and the heirs male of the body or several and respective bodies of the same son and sons respectively lawfully issuing; every elder of the same sons, and the heirs male of his body issuing, being always to be preferred to and to take before every younger of the same sons, and the heirs male of his body issuing; And on failure of such issue, To the use of the first, second, third, fourth, fifth, and all and every other son and sons of the said A. B. by the said C. D., his intended wife, severally and successively in remainder, one after the other, as they respectively shall be in seniority of age and priority of birth, and the heirs of the body or several and respective bodies of the same son and sons respectively lawfully issuing; every elder of the same sons and the heirs of his body issuing being always to be preferred to and to take before every younger of the same sons and the heirs of his body issuing; And on failure of such issue, To the use &c.

To daughters as tenants in common in tail general, with cross remainders between them in tail general.

LIII. To the use of the daughter, if only one, and if more than one, then all the daughters of the said A. B. by the said C. D., his intended wife, to be equally divided between or amongst them, if more than one, share and share alike, as tenants in common, and not as joint tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively lawfully issuing; And on failure of the issue of any one or more of the said daughters of the said intended marriage, (in case there shall be more than one such daughter), then as to and concerning the original part or share of and in the said messuages &c., which shall belong to the same daughter or daughters re-

spectively under the limitations hereinbefore contained, and also as to and concerning the part or share or several and respective parts and shares of and in the same messuages &c., which from time to time shall belong to or vest in or be taken by the same daughter or daughters respectively, or her or their issue, under this present limitation of cross remainders, To the use of the other or others of the same daughters, to be equally divided between or amongst them, if more than one, share and share alike, as tenants in common, and not as joint tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively lawfully issuing; And on failure of the issue of all the said daughters, To the use &c.

For children as tenants in common in tail general, with cross remainders. (Short form).

LIV. To the use of the child, if only one, and if more than one, all and every the children of the (*a*) said intended marriage, as tenants in common, and of the several and respective heirs of the bodies of such child and children lawfully issuing; and on default of issue of any one or more such children, Then as to the original share of such child, and also as to the part or share, parts or shares of the same child and children respectively, which he, she, or they shall take under this present limitation of cross-remainders, To the use of the other or others of the same children, as tenants in common if more than one, and the heirs of the body or respective bodies of such last-mentioned child or children lawfully issuing.

To children as tenants in common in fee, with cross limitations, on dying under twenty-one without issue.

LV. To the use of the child, if only one, and if more than one, all the children of the said A. B., by the said C. his wife, if more than one, share and share alike as tenants in common and not as joint tenants, and his, her,

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(*a*) Or, according to circumstances,—

"Of the marriage of the said A. B. with any husband or husbands with whom she may at any time, and from time to time, intermarry."

Or, "of the said C. D., by any woman with whom he may marry after the decease of the said A. B."

or their heirs and assigns, or several and respective heirs and assigns for ever, as tenants in fee and not as tenants in tail; and in case any one or more of the said children shall die under the age of twenty-one years, without leaving any issue of his, her, or their body or respective bodies, lawfully begotten, living at the time of his, her, or their death or respective deaths, Then as to, for, and concerning the original share or shares of and in the said messuages &c., which shall belong to the child or children respectively dying as aforesaid, and also the share or several shares of and in the same messuages &c., which the same child or children respectively shall take under this present provision by way of cross limitations, To the use of the other or others of the same children, if more than one, share and share alike as tenants in common, and not as joint tenants, and his, her, or their heirs and assigns, or several and respective heirs and assigns for ever, as tenants in fee and not as tenants in tail; and in case there shall not be any child &c., or in case the child, or if more than one all the children, of the said A. B. shall depart this life under the age of twenty-one years, without leaving any issue of his, her, or their body or respective bodies, lawfully begotten, living at his, her, or their death or respective deaths, Then &c.

To intended wife in fee until marriage, and after marriage, to husband for life, with remainder to wife, in case she shall survive him.

LVI. To the use of the said A. B., her heirs and assigns, until the said intended marriage shall be had and solemnized; and from and immediately after the solemnization thereof, To the use of the said C. D. and his assigns, during his life, without impeachment of waste; And from and immediately after his decease, in case the said C. D. shall survive the said A. B., her said intended husband, To the use of the said C. D., and her assigns, during her life, without impeachment of waste; And from and immediately after the decease of the survivor of them the said A. B. and C. D., To the use &c.

In favour of children and their issue, as parents shall appoint; remainder to children, as tenants

LVII. To the use of all and every or such one or more, exclusively of the other or others, of the children of the said A. B. by the said C. D., or of the issue born in the lifetime of the said A. B. and C. D., or the survivor of them, of the

said child or children, or any of them, at such time and times, and for such estate and estates, interest and interests, in such parts, shares, and proportions, and charged and chargeable with such annual or other sum or sums of money (*a*), for the benefit of some one or more of the said children, as the said A. B. and C. D. shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by them respectively sealed and delivered in the presence of, and to be attested by two or more credible witnesses, jointly direct, limit, or appoint; and in default of such joint direction, limitation, and as to such part or parts thereof whereof there shall be no such joint direction, limitation, or appointment, and in case such shall be made, then, when, and as the estates and interests thereby directed, limited, and appointed shall respectively end and determine, To the use of all and every the child and children of the said A. B. by the said C. D., to be divided between or amongst them, if more than one, in equal shares and proportions, as tenants in common, and of the several and respective heirs of all and every such child and children; and in default of such issue, To the use of the right heirs of the survivor of them the said A. B. and C. D.

in common in fee, remainder to the right heirs of the surviving parent.

LVIII. To the use of the said A. B., his heirs, executors, administrators, and assigns; and if the said A. B. shall depart this life under the age of twenty-one years, without leaving any issue of his body lawfully begotten living at his death, then to the use of the second, third, fourth, fifth, and all and every other son and sons of the marriage of the said C. D. and E. his wife, severally and successively, one after the other, in order and course as they shall respectively be in seniority of age and priority of birth, and their several and respective heirs, executors, administrators, and assigns, every elder of such sons to be preferred to every younger of the same sons, yet nevertheless so that the estate of each and every son who shall depart this life under the age of twenty-one years, without leaving any issue of his body lawfully be-

A limitation by way of executory devise to sons successively. (A short form).

(*a*) Vide Tit. vi. art. vi. n. ante.

gotten living at his death, may immediately upon his death cease and determine in favour of his next brother, his heirs, executors, administrators, and assigns; To the intent that the same lands and hereditaments may be taken and enjoyed by each son in succession, according to his seniority, in case his elder brother shall die under the age of twenty-one years, without leaving any issue of his body lawfully begotten living at his death, and so that the estate of any son who shall attain the age of twenty-one years, or die under that age, leaving issue living at his death, may become absolutely vested in him.

To first and other sons in tail male. (In wills).

LIX. To the use of the first, second, third, fourth, and fifth, and all and every other son and sons of the said A. B., severally and successively in remainder one after the other, as they respectively shall be in seniority of age and priority of birth, and the heirs male or several and respective heirs male of the body or several and respective bodies of the same son and sons respectively lawfully issuing, every elder of the same sons, and the heirs male of his body issuing, being always to be preferred to and take before every younger of the same sons, and the heirs male of his body issuing; And on failure of such issue, &c.

To daughters as tenants in common in tail, with cross remainders between them. (In wills).

LX. To the use of the daughter, if only one, and if more than one, then to all the daughters of my said sister A. B. to be lawfully begotten, to be equally divided between or amongst them if more than one, share and share alike, as tenants in common and not as joint tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively lawfully issuing; and on failure of the issue of any one or more of the said daughters, (in case there shall be more than one such daughter), Then as to and concerning the original part or share of and in the said manors and hereditaments, which shall belong to the same daughter or daughters respectively, under the limitations hereinbefore contained, and also as to and concerning the part or share, or several and respective parts or shares of and in the same manors and hereditaments, which, from time to time, shall belong to, or vest in, or be taken by the same

daughter or daughters respectively, or her or their issue, under this present limitation of cross remainders, To the use of the other or others of the same daughters, to be equally divided between or among them if more than one, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively lawfully issuing; And on failure of the issue of all the said daughters, To the use &c.

For children of a deceased person (nominatim) living at testator's death, and issue then living of such of them as die in testator's lifetime, with cross limitations between them. (In wills).

LXI. Unto and to the use of A. B., C. B., D. B., and E. B. the four children of B. B., late of &c., or such of them as shall be living at my decease, and the issue then living of such of them as shall be then dead, if more than one, as tenants in common and not as joint-tenants, and his, her, and their respective heirs and assigns, and in such manner that the issue of such of them the said A. B., C. B., D. B., and E. B., as shall be then dead, shall take per stirpes and not per capita, if the circumstances shall require, and so that the same issue, if more than one, shall take equally between them the share only which his, her, or their parent or respective parents would have taken if then living, and so as no person may take under the description of issue unless his, her, or their parent shall have departed this life in my lifetime; Provided always, and I do hereby declare my mind to be, that in case at any time after my decease, any or either of them, the said A. B., C. B., D. B., and E. B., or issue, entitled as aforesaid, shall depart this life under the age of twenty-one years, and without leaving issue living at his, her, or their death or respective deaths, Then I give and devise the original share or shares of and in the said premises, which shall belong to him, her, or them so dying, and also the part or share, parts or shares, which he, she, or they respectively shall take under this present provision, unto the other or others of them, the said A. B., C. B., D. B., and E. B., who shall be living at my death, or issue then living, of such of them as shall be then dead, if more than one, as tenants in common and not as joint-tenants, and to his, her, and their respective heirs and assigns, and in such parts, shares, and proportions, in manner and form

as are hereinbefore directed with respect to the original shares of the same persons respectively; And in case none of them, the said A. B., C. B., D. B., and E. B., or issue of any of them, to be entitled as aforesaid, shall be living at my death, or if each of them the said A. B., C. B., D. B., and E. B., who shall be living at my death, and the issue then living of such of them as shall be then dead, shall afterwards depart this life under the age of twenty-one years, and without leaving any issue living at his, her, or their death or respective deaths, then I give and devise all the said freehold and copyhold estates Unto and to the use &c.

To the use of a trustee during the life of the father, or till his eldest son or daughter shall be of age. (In wills).

LXII. To the use of A. B., and his heirs during the natural life of C. D., [*the father*], or, which shall first happen, until his eldest or only son, or if no son or such son shall die, his only or eldest daughter shall attain his or her age of twenty-one years; In trust nevertheless to support the contingent uses and estates hereinafter limited from being defeated or destroyed, and in trust to pay and apply the rents and other profits which shall become due, after the estate lastly hereby limited to the use of the said C. D. shall fall into possession, and thenceforth during the continuance of the same estate, unto or for the benefit of the person or persons who for the time being shall be beneficially entitled to the first or next vested estate, under the uses or trusts of this my will; and from and after the determination of the estate lastly hereby limited, To the use of the said C. D., and in the meantime subject thereto, and to the trusts thereof, To the use &c.

Limitation to several persons as tenants in common, for their lives, with remainders, as to share of each tenant for life, to the issue of that tenant for life, in strict settlement. (In wills, by one clause).

LXIII. To the use of A. B. of &c., C. D. of &c., and E. F. of &c., and their respective assigns, for their respective lives, share and share alike, as tenants in common and not as joint-tenants, and without impeachment of or for any manner of waste, (except such voluntary waste as aforesaid); And from and after the determination of each such estate for life respectively, then, as to the part or share in which he and she respectively is to have an estate for life as aforesaid, To the use of the said A. A. and B. B., [*trustees*], and their heirs, during the natural life of each such tenant for

life respectively, Upon trust to preserve the contingent remainders hereinafter limited from being defeated or destroyed; And from and after the decease of each such tenant for life respectively, then, as to the part or share in which he and she respectively is to have an estate for life as aforesaid, To the use of the first, second, third, fourth, fifth, and all and every other son and sons of the tenant for life so dying, lawfully begotten or to be begotten, severally and successively in remainder, one after the other, as they respectively shall be in priority of birth, and the heirs male, or several and respective heirs male of the body or several and respective bodies of the same son and sons respectively lawfully issuing, every elder of the same sons, and the heirs male of his body issuing, being always to be preferred to and take before every younger of the same sons, and the heirs male of his body issuing; And on failure of such issue, then, as to the said part or share of such tenant for life respectively as aforesaid, To the use of the first, second, third, fourth, fifth, and all and every other son and sons of the same tenant for life lawfully begotten or to be begotten, severally and successively in remainder, one after another, as they respectively shall be in priority of birth, and the heirs of the body or several and respective bodies of the same son and sons respectively lawfully issuing, every elder of the same sons, and the heirs of his body issuing, being always to be preferred to and to take before every younger of the same sons, and the heirs of his body issuing; And on failure of such issue, then, as to the said part or share of such tenant for life respectively as aforesaid, To the use of the daughter, if only one, and if more than one then all the daughters of the same tenant for life lawfully begotten and to be begotten, to be equally divided between or amongst them if more than one, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively lawfully issuing; And on failure of the issue of any one or more of the said daughters, (in case there shall be more than one), then, as to the original, and also any accruing part or share, parts and shares of such daughter or daughters respectively whose issue shall so fail, To the use of the other

or others of the same daughters, to be equally divided between or amongst them if more than one, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively; And on failure of the issue of all the said daughters, then, as to the part or share in which the parent or parents of such daughters respectively is to have an estate for life, To the use of the others of them the said last-mentioned tenants for life, as tenants in common for their respective lives, with remainder as to each share so accruing, To the use of the said trustees and their heirs during the life of each tenant for life entitled thereto, in trust to support contingent remainders in manner aforesaid; with remainder, as to the said share so accruing to each of them the said tenants for life, To the use of his first and other sons in the manner aforesaid successively in tail male; with remainder to the same first and other sons in the manner aforesaid successively in tail general; with remainder To the use of the daughter or daughters of each of them the said tenants for life in the manner aforesaid, if more than one, as tenants in common in tail, with cross remainders between them if more than one, as tenants in common in tail; And I hereby devise the like cross remainders on all such accruing shares unto, for, and between the said tenants for life, and their issue male and female, as are hereinbefore limited in their original shares; And if there shall be a default or failure of the issue male and female of all of them the said A. B., C. D., and E. F. respectively, then I give and devise the said last-mentioned moiety of and in my said freehold messuages, lands, tenements, and hereditaments, and of and in their appurtenances, to the said H. D., the eldest son of the said Sir H. D., his heirs and assigns for ever.

Limitation to daughters of sons in tail, with cross remainders between them. (In wills).

LXIV. To the use of the daughter, if only one, and if more than one, then all the daughters of each of my sons born and to be born, to be equally divided between or amongst the daughters, if more than one, of each son, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of

the same daughter and daughters respectively lawfully issuing; And on failure of the issue of any one or more of the daughters of each or either of the same sons, then as to and concerning the original part or share of and in the said manors and hereditaments which shall belong to the same daughter or daughters respectively under the limitations hereinbefore contained, and also as to the part and share or several and respective parts and shares of and in the same manors and hereditaments, which from time to time shall belong to, or vest in, or be taken by the same daughter or daughters respectively, or her or their issue, under this present limitation of cross-remainders, To the use of the other or others of the daughters of the same son, to be equally divided between or among such daughters if more than one, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of the same daughter or daughters respectively lawfully issuing; yet nevertheless so that the daughter or daughters, and the heirs of the body or bodies of the daughter or daughters, of each elder son, shall be preferred to and take before the daughter or daughters, and heirs of the body or bodies of the daughter or daughters, of every younger son. And for default of the issue of all such daughters, &c.

To children in fee, with cross limitations, in case any one or more of them shall die under twenty-one, and without leaving issue living at his, her, or their death. (In wills).

LXV. Unto the child if only one, or if more than one all the children, of my nephew A. B., lawfully begotten and to be begotten, either in my lifetime or after my death, and if more than one, then as tenants in common, and to his, her, or their respective heirs and assigns for ever, as tenants in fee, and not as tenants in tail. And in case any one or more of the said children shall die under the age of twenty-one years, without leaving any issue of his, her, or their body or respective bodies lawfully begotten, living at the time of his, her, or their death or respective deaths, then I give and devise the original share or shares of and in the said messuages &c., which shall belong to the child or children respectively dying as aforesaid, and also the part or share or several parts or shares of and in the said messuages &c., which he, she, and they respectively shall

take under this present provision, unto the other or others of the same children, if more than one, as tenants in common, and to his, her, or their respective heirs and assigns, as tenants in fee and not as tenants in tail. And in case there shall be no child of the said A. B., or in case the child, or if more than one, all the children, of the said A. B. shall depart this life under the age of twenty-one years, and neither of them shall leave any issue of his or her body lawfully begotten, living at his or her death, Then &c.

Limitations by testator to sons successively for life, remainder to trustees to preserve &c., remainder to grandsons in tail general, remainder to testator's right heirs.

LXVI. Unto my son A. B., and every younger son successively, according to the priority of his birth, and to his assigns, for his life, without impeachment of waste; with remainder, immediately after the determination of the estate of each of the same sons respectively, to the said C. D. and E. F., and their heirs, during the life of the same son, Upon trust, to preserve the contingent remainders; and subject thereto, In trust for the same son and his assigns during his natural life, with remainder, from and immediately after the decease of each such son respectively, to the first and every other son of that son successively in remainder, according to the priority of the births of the same grandsons, and the respective heirs male of the respective bodies of the same grandsons, so that each of the elder of my sons, and his first and other sons, and the heirs male of the body of the same sons, may be preferred to and take before the younger of the same sons, and their first and other sons, and the heirs male of the bodies of the same sons. And on the determination of all the said estates, Then to my own right heirs for ever.

Devise to four successively for life, sans waste;

LXVII. Unto A. B. the third son of &c., C. D. the fourth son of &c., E. F. of &c., and G. H. of &c., viz., each of them severally succeeding in the order in which they are named in this clause, for and during the term of his respective life, without impeachment of waste (*a*); and from and imme-

(*a*) The object of this clause is, to avoid the repetition of four successive limitations of estates for life, with remainders to the first and other sons in tail; the whole being compacted into one clause.

diately after the determination of the estate of each respectively of them the said A. B., C. D., E. F., and G. H., by means of forfeiture or otherwise, and by way of remainder immediately expectant on that estate, I give, devise, and bequeath the same reversion or remainder unto my said trustees, A. A. and B. B., and their heirs, during the natural life of the same tenant for life respectively, in trust to support the contingent remainders hereinafter limited, and for that purpose to make entries, and bring actions as occasion may require; But, nevertheless, to permit and suffer the same tenant for life respectively, and his respective assigns, during his natural life, to receive and take the rents, issues, and profits of the hereditaments respectively, to and for his and their own use and benefit; and from and immediately after the determination of the estate hereinbefore limited to each respectively of them the said A. B., C. D., E. F., and G. H., and by way of remainder immediately expectant on the determination of the estate limited for his life, I give, devise, and bequeath the same reversion and remainders unto the first and other sons lawfully begotten and to be begotten by each of them the said A. B., C. D., E. F., and G. H. respectively, and the heirs male of the bodies of the sons of each of the same tenant for life respectively, the sons of each tenant for life respectively to take severally and successively according to priority of birth and seniority of age; each of the said tenants for life, in the order in which they are named, and his first and other sons, and the heirs male of the bodies of the same sons of the tenant for life respectively, to take before every other of the same tenants for life being subsequently named, and his first and other sons, and the heirs male of the respective bodies of the same sons respectively, and every elder of the sons of each tenant for life respectively, and the heirs male of the bodies of that son to take before every younger of the sons of the same tenant for life respectively, and the heirs male of his body. And in default of any such issue, I give, devise, and bequeath the same reversion and remainder unto my own right heirs for ever.

Remainder to trustees to preserve;

Remainder to first and other sons of the several tenants for life in tail male.

Each of the tenants for life, and his sons in tail male, to take before the other tenants for life and their sons, &c.

Remainder to testator's right heirs.

LXVIII. To the use of each and every of my sons to be hereafter born, for and during the term of his natural life,

For after-born sons successively, and their

first and other sons in tail male.

with such powers as are hereinafter mentioned, and without impeachment of waste (except such waste as aforesaid), and severally and successively in order and course as they respectively shall be in seniority of age and priority of birth; And from and after the determination of the estate hereby limited to each such after-born son respectively for the term of his life, To the use of the said A. B. and C. D., their heirs and assigns, during the natural life of the same son respectively, upon trust by the usual ways and means to preserve the contingent uses and estates hereinafter limited; And from and immediately after the decease of each such son respectively, To the use of the first, second, third, fourth, fifth, and all and every other son and sons of the same son, severally, successively, and in remainder, as the same grandsons respectively shall be in seniority of age and priority of birth; and the several and respective heirs male of the body and bodies of the same grandson and grandsons respectively lawfully issuing; every elder of the same grandsons respectively, and the heirs male of his body, to be always preferred and to take before every younger of the same grandsons, and the heirs male of his body issuing; and every elder of such my after-born sons, and his first and every other son and sons, and the heirs male of the body of the same grandson and grandsons lawfully issuing, to be preferred and to take before every younger of my after-born sons, and the first and other sons of the same younger son and sons, and the heirs male of the body and respective bodies of the first and other sons of such my younger son and sons; And &c.

For daughters of successive after-born sons in tail, with cross remainders in tail between them.

LXIX. To the use of the daughter if only one, and if more than one, then all the daughters of each of my sons to be hereafter born in lawful wedlock, preferring the daughter or daughters of each son, as the same son shall be in seniority of age and priority of birth, and to be equally divided between or amongst the daughters if more than one of each son, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of all and every such daughter and daughters lawfully issuing; the daughter and daughters of every elder of such son and sons hereafter to be born,

and the heirs of her and their body, or several and respective bodies, always to be preferred to and to take before the daughter and daughters of every younger of such sons to be hereafter born, and the heirs of her and their body or respective bodies issuing; And on failure of the issue of any one or more of the daughters of each or either of my sons to be hereafter born, Then as to and concerning the original part or share of and in the said manor, messuages &c., which shall belong to the daughter or daughters of whose issue there shall be such failure under the limitations hereinbefore contained, and also as to the part and share, or several and respective parts and shares of and in the same manor &c. which shall belong to, or vest in, or be taken by the same daughter or daughters respectively, or her or their issue, under this present limitation of cross-remainders, To the use of the sister or sisters of the same daughter or daughters respectively, to be equally divided between or amongst the same sisters, if more than one, share and share alike, as tenants in common and not as joint-tenants, and the heirs of the body or several and respective bodies of such sister or sisters respectively issuing; And on failure of the issue of the daughters of my sons to be hereafter born, To the use &c.

TITLE VII.

OF TRUSTS.

Declaration of trust by a person purchasing

I. I THE said A. B. [*trustee*] do hereby acknowledge and declare (*a*) that the sum of £—— within mentioned to be

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(*a*) The following recital should be premised:—

"Whereas the lands and hereditaments comprised in the within-written indenture were purchased by me at the request and on the part and behalf of C. D., [*the cestui que trust*], of &c."

To prevent the inconveniences arising from parol declarations of trusts, it was enacted by the Statute of Frauds, 29 Car. 2, c. 3, s. 7, that all declarations or creations of trusts, or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect. By the 8th section, however, it is provided, that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if that statute had not been made.

With regard to these enactments, it will be observed—

1. That the words "lands, tenements, or hereditaments" clearly exclude trusts of personalty, which may be accordingly proved by parol.

2. The trust need not be raised by any writing; the statute is satisfied if it be manifested and proved by some writing; and no particular form of words is prescribed for that purpose.

3. The writing manifesting and proving the trust must be signed by the party legally qualified to declare it.

4. If the trust be manifested and proved by the party's will, such will must be, not nuncupative, but in writing, and executed with all the formalities requisite for passing lands, tenements, or hereditaments. Vide Vol. I. book iii. chap. vii.

5. The foregoing observations do not apply to resulting trusts, which are expressly exempted by the 8th section. Notwithstanding this ex-

paid by me as the consideration of and for the purchase of the lands and hereditaments therein comprised, and so thereby conveyed to me and my heirs, as by the within-written indenture is mentioned, was the proper money of the said C. D., and that the name of me the said A. B. was made use of in the same indenture, in trust only for him the said C. D., his heirs and assigns, and upon and for no other trust, intent, or purpose whatsoever. And I the said A. B., for myself, my heirs, executors, and administrators, do by these presents wholly and utterly renounce and disclaim all and all manner of beneficial and other estate, right, title, interest, claim, and demand whatsoever, as well legal as equitable, into, upon, or respecting the lands, tenements, and hereditaments by the within-written indenture granted and released, or otherwise assured unto me, my heirs and assigns, as therein is mentioned, except only and otherwise than in trust for the said C. D., his heirs and assigns. And I do hereby also grant and declare, that I, my heirs and assigns, and all and every person or persons, at any time hereafter lawfully claiming or possessing any estate, right, title, or interest in, to, or concerning the said hereditaments and premises, or any of them, or any part thereof, from, through, or under me or them, or any of them, shall and will, from time to time, and at all or any times hereafter, at the request, cost, and expense of the said C. D., his heirs or assigns, grant, release, convey, and assure the same lands, tenements, and hereditaments, and every of them, with their and every of their appurtenances, and all such the said estate, right, title, and interest of me the said A. B., my heirs and assigns, in or to the same, unto

a freehold estate for another in his own name, to be indorsed on the purchase-deed.

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emption, where one buys an estate and takes the conveyance, not in his own name, but in that of a third person, without disclosing the nature of the transaction on the face of the deed, it is always desirable to indorse on the conveyance a declaration of trust, signed by the trustee, according to the form given in the text. Mr. Sanders, indeed, supposed, that, after the death of the nominal purchaser, parol evidence alone was insufficient to negative the express declaration of the deed; but this opinion is clearly not supported by the authorities. Vol. I. book iii. chap. i.; and see Sugd. Vend. & Pur. ii. 137.

and to the use of or for him the said C. D., his heirs and assigns for ever, or unto and to the use of or for such other person or persons, upon such trusts, and for such ends, intents, and purposes as he or they shall, by any writing under his or their hand or respective hands, direct or appoint; and that free and clear, and absolutely and effectually discharged and exonerated of and from all liens, charges, and incumbrances whatsoever, made, occasioned, or knowingly suffered by me the said A. B., or my heirs, or any person or persons deriving title from or under me or them. And further, that in the meantime, and until such release, conveyance, and assurance shall be made and perfected, I the said A. B., and my heirs, and all and every such other person or persons as aforesaid, shall and will stand seised of and interested in all and every the said hereditaments and premises, in trust only and for the sole use, behoof, and benefit of him the said C. D., his heirs, appointees, and assigns for ever.

Declaration that money advanced on mortgage, is the proper money of a third person.

II. He the said A. B. doth hereby acknowledge and declare (*a*) that the said sum of £——, which in or by the said in part recited indenture was expressed to have been paid by the said A. B. to the said C. D., as therein is mentioned, was and is the proper money of the said E. F., and that the name of him the said A. B., in the said indenture of demise, and in the bond or obligation of even date therewith, and therein referred to, was made use of, in trust only and to and for the sole use and benefit of the said E. F., his heirs, executors, administrators, and assigns, and to, for, or upon no other use, trust, intent, or purpose whatsoever. And the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said E. F., his executors, administrators, and assigns, that he the said A. B., his heirs, executors, administrators, and assigns, shall and will from henceforth, and at all times hereafter, stand and be seised or possessed of or interested in the said mortgaged premises, and every

(*a*) Vide Art. I., note.

part thereof, in trust for him the said E. F., his executors, administrators, and assigns; and also that he the said A. B., his heirs, executors, or administrators, shall not nor will at any time hereafter, without the consent in writing of the said E. F., assign or otherwise vacate the said mortgage, nor release the monies thereby secured, until the said E. F. shall be fully paid and satisfied the said sum of £—— and interest, in the manner in the said in part recited indenture expressed, nor do nor cause to be done, nor knowingly suffer any deed, matter, or thing whatsoever, whereby or by reason or means whereof the said premises, or any part thereof, shall or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever; and further, that he the said A. B., his heirs, executors, and administrators, shall and will, at any time hereafter, at the reasonable request, and at the costs and charges in the law of the said E. F., convey and assure all and singular the said messuages, lands, tenements, and hereditaments and premises, with their and every of their appurtenances, unto and for the use of the said E. F., his executors, administrators, or assigns, or unto such other person or persons as he or they shall, in writing under his or their hand and seal, or respective hands and seals, direct in that behalf, in such manner and form as he the said E. F., his executors, administrators, or assigns, or his or their counsel in the law, shall advise and require; And free and clear &c. (Vide Art. I.)

III. It is hereby declared (*a*) and agreed by and between Declaration of trust of pur-

(*a*) The following recitals will best explain the object of this declaration of trust:—

"Whereas, by indentures of lease and release, the lease bearing date the day next before the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said A. B. [*vendor*] of the one part, and the said C. D. [*purchaser*] of the other part, certain lands and hereditaments therein particularly described were conveyed and assured unto and to the use of the said C. D. and his heirs, by the said A. B., in

chase-money invested in the funds, to indemnify purchaser against incumbrances.

the several parties to these presents, that they the said L. M. &c. [*trustees*], and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, shall stand possessed of and interested in the said sum of £—— 3 per cent. Consolidated Bank Annuities, upon the several trusts, and to and for the intents and purposes, and under and subject to the provisoes, declarations, and agreements hereinafter declared and expressed concerning the same; that is to say, Upon trust to permit and authorise the said A. B., his executors, administrators, and

To permit vendor to receive the dividends so long as he shall indemnify purchaser.

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consideration of the sum of £—— therein expressed to have been agreed to be paid by the said C. D. to the said A. B., for the absolute purchase of the said hereditaments, free from incumbrances. And whereas, under or by virtue of the last will and testament in writing of E. F. [*testator*], late of &c., deceased, bearing date &c., the said hereditaments, together with others, are chargeable with the payment of an annuity or clear yearly sum of £—— during the natural life of G. H. [*annuitant*], of &c., and also with the payment of a legacy or sum of £—— unto I. K. [*legatee*], of &c., upon his attaining the age of twenty-one years. And whereas, upon the contract for the purchase of the said hereditaments, it was agreed that the sum of £——, part of the said purchase-money or sum of £——, should be invested in the purchase of £—— 3 per cent. Consolidated Bank Annuities, in the joint names of three or more persons, to be named and approved of by the said A. B. and C. D., upon trust to indemnify the said C. D. and the said hereditaments from the payment of the said annuity and legacy so respectively charged thereon as aforesaid, and that a proper deed of declaration of trust thereof should for that purpose be executed by the several parties hereto. And whereas the sum of £—— hath accordingly been this day invested by the said C. D., with the consent and approbation of the said A. B., testified as hereinafter is mentioned, in the purchase of £—— 3 per cent. Consolidated Bank Annuities, in the joint names of the said L. M. &c., as trustees named and approved of by the said A. B. and C. D. respectively."

assigns, to receive and take the dividends, interests, and annual proceeds of the said trust monies, to and for his and their own use and benefit, so long as he or they, or any or either of them, do and shall well and truly pay or cause to be paid the said annuity or yearly sum of £—— unto the said G. H., during the term of his natural life, and also the said legacy or sum of £—— unto the said I. K. upon his attaining his said age of twenty-one years, according to the true intent and meaning of the said in part recited will; or do and shall from time to time and at all times hereafter save, protect, defend, keep harmless, and indemnify the said C. D., his heirs and assigns, and also the several hereditaments so sold and conveyed unto the said C. D. as aforesaid, and all and every the appurtenances thereunto belonging, of, from, and against the same, and also of, from, and against all and all manner of actions, suits, executions, and other proceedings whatsoever at law or in equity, upon, under, or by virtue or on account of the said annuity and legacy, or either of them as aforesaid, and of, from, and against all costs, damages, and expenses whatsoever, which shall or may at any time be sustained or occasioned by reason or on account thereof, or otherwise in relation thereto; And upon further trust, that in case the said A. B., his executors or administrators, shall at any time fail or neglect to pay or cause to be paid the said annuity or yearly sum of £——, and the said legacy or sum of £——, or either of them, or any part of the same respectively, then and in such case they the said L. M. &c., and the survivors and survivor of them, and the executors and administrators of the survivor, and their or his assigns, do and shall, by and out of the dividends, interest, and annual and other proceeds of the said sum of £—— 3 per cent. Consolidated Bank Annuities, and in case the same shall not be sufficient for the purpose, then by sale, transfer, or other disposition of the said sum, or a competent part thereof, to raise and obtain all and every such sum and sums of money as shall be then due, owing, or recoverable upon, under, or by virtue of the said annuity or yearly sum of £——, and the said legacy or sum of £——, or either of them, and all such costs, damages, and expenses as he the said C. D., his executors, administrators, or as-

In default thereof, trustees to keep down incumbrances.

signs, shall or may have sustained, or be liable to pay, in consequence of any such default or neglect as aforesaid, and do and shall pay, apply, and dispose of the monies arising by any of the means aforesaid, in payment and satisfaction thereof accordingly; and from and after full payment and satisfaction of all such sum and sums of money, and costs, charges, damages, and expenses as aforesaid, Then upon trust that they the said L. M. &c., and the survivors and survivor of them, and the executors and administrators of the survivor, and their or his assigns, do and shall pay the residue of the said dividends, interest, and proceeds of the said sum of £——, or of such part thereof as shall remain after satisfying the trusts aforesaid, unto the said A. B., his executors, administrators, and assigns, from time to time, as and when the same shall be received, to and for his and their own use and benefit; And from and after the decease of the said G. H., and payment of all arrears of the said annuity or yearly sum of £——, and also payment of the said legacy or sum of £——, then upon trust, that they the said L. M. &c., and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, or other the trustee or trustees for the time being, do and shall, at the request, costs, and charges of the said A. B., his executors, administrators, or assigns, transfer, assign, and make over the said sum of £—— 3 per cent. Consolidated Bank Annuities, or so much thereof as shall remain undisposed of under the trusts aforesaid, together with all interests, dividends, and proceeds then due in respect thereof, unto the said A. B., his executors, administrators, and assigns, to and for his and their own use and benefit.

And pay surplus to vendor.

Upon decease of annuitant and payment of legacy, principal to be transferred to vendor.

IV. It is hereby agreed and declared, between and by the parties to these presents, that the said A. B. and C. D., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £—— 3 per cent. Consolidated Bank Annuities, so by the said E. F. purchased in their names, as hereinbefore is mentioned, and of and in the dividends and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and

Declaration of trusts of stock purchased with money withheld by a purchaser on the sale of an estate, by way of indemnity to himself against the non-execution of the conveyance by a remainder-man in

agreements hereinafter contained of and concerning the same; (that is to say), Upon trust, that they the said A. B. and C. D., and the survivor of them, his executors, administrators, and assigns, do and shall, in the first place, by and out of the dividends and annual produce of the said sum of £—— 3 per cent. Consolidated Bank Annuities, levy and raise the sum of £—— of lawful money of Great Britain, and pay the same to the said G. H., or his assigns, for his life, in satisfaction and discharge of the annual sum of £——, bequeathed by the said J. K. to the said G. H., and his assigns, for his life, as hereinbefore is mentioned; And subject thereto, upon trust, that they the said [*trustees*] do and shall in the meantime, and until the said L. M. the son, his heirs or assigns, shall in pursuance of the covenant for that purpose hereinbefore entered into by the said L. M. the father, convey and assure the messuages &c., by the said E. F. so contracted to be purchased as aforesaid, with the appurtenances, unto and to the use of the said E. F., his heirs and assigns, or, as he or they shall direct or appoint, pay the dividends and annual produce of the said sum of £—— 3 per cent. Consolidated Bank Annuities, to the said L. M. the father, or permit the same to be received by the said L. M. the father, and his assigns, for his and their own proper use and benefit; And upon this further trust, that if the said L. M. the son, his heirs or assigns, shall, in pursuance of the covenant for that purpose hereinbefore entered into by the said L. M. the father, convey and assure the messuages &c., by the said E. F. contracted to be purchased as aforesaid, with their appurtenances, unto and to the use of the said E. F., his heirs and assigns, or as he or they shall direct or appoint, then and in that case, if the said L. M. the son shall then be living, the said L. M. the father shall transfer the said sum of £—— 3 per cent. Consolidated Bank Annuities to trustees, to be for that purpose named by the said L. M. the son, or his heirs; In trust to pay the dividends and annual produce thereof to the said L. M. the father, and his assigns, for his life, and after his decease to transfer the principal sum of £—— 3 per cent. Consolidated Bank Annuities to the said L. M. the son, his heirs or assigns, or other the person or

fee, who at the time of the purchase was a minor.

persons who shall convey the said messuages &c. unto and to the use of the said E. F., his heirs and assigns; But if the said L. M. the father shall depart this life before such conveyance shall be made as aforesaid, then upon trust that they the said [*trustees*] do and shall, immediately upon and after the execution of such conveyance, transfer the said sum of £—— 3 per cent. Consolidated Bank Annuities, and the dividends and annual produce thereof, unto the said L. M. the son, his heirs or assigns, or other the person or persons who shall convey the said messuages &c. unto and to the use of the said E. F., his heirs and assigns; And upon this further trust, that if the said L. M. the son, his heirs or assigns, shall refuse or neglect, by the space of six calendar months, to convey the said messuages &c. unto and to the use of the said E. F., his heirs or assigns, or as he or they shall direct or appoint, in pursuance of the covenant hereinbefore for that purpose entered into by the said L. M. the father, then and in that case the said [*trustees*] do and shall, immediately after the decease of the said L. M. the father, and such neglect or refusal of the said L. M. the son, his heirs or assigns, as hereinbefore is mentioned, transfer and assign the said sum of £—— 3 per cent. Consolidated Bank Annuities, and the dividends and annual produce thereof, unto the said E. F., his executors, administrators, or assigns; And upon this further trust, that if such conveyance as aforesaid shall not be executed by the said L. M. the son, his heirs or assigns, in the lifetime of the said L. M. the father, then and in that case, and in the meantime, and until the said L. M. the son, his heirs or assigns, shall execute, or neglect or refuse to execute the said conveyance, in pursuance of the said covenant entered into by the said L. M. the father, they the said [*trustees*] do and shall receive the dividends and annual produce of the said sum of £—— 3 per cent Consolidated Bank Annuities, and the dividends and annual produce thereof &c.

Of lands conveyed as an indemnity.

V. Upon trust, that in case the said A. B., his heirs, executors, and administrators, shall well and truly save harmless and keep indemnified the said C. D., his heirs, executors, administrators, and assigns, and his and their estate and effects

whatsoever and wheresoever, and particularly the lands and other hereditaments, by the said hereinbefore in part recited indenture of appointment and release, of even date herewith, granted and released, or expressed and intended so to be, in manner aforesaid, and according to the true intent and meaning of the covenant hereinbefore for that purpose contained, then the said C. D., his heirs and assigns, shall at any time thereafter, at the request, costs, and charges of said A. B., his heirs, executors, administrators, and assigns, reconvey the said lands and other hereditaments hereinbefore granted and released, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns, or as he or they shall direct or appoint, free from all incumbrances made or committed by the said C. D., his heirs or assigns, or any of them; And upon this further trust, that in case default shall be made by the said A. B., his heirs, executors, or administrators, in the performance of the covenant for indemnity hereinbefore contained, or any part thereof, contrary to the true intent and meaning of these presents, then upon trust that the said C. D., his heirs and assigns, do and shall forthwith, or at any time or times thereafter, and from time to time and so often as the same shall happen, by and out of the rents, issues, and profits of the said lands and other hereditaments, hereinbefore granted and released, or expressed and intended so to be, or by leasing, mortgaging, selling, or otherwise disposing of the same lands and other hereditaments, or any of them, or any part thereof, or by bringing any action or actions against all or any of the tenants or occupiers of the same hereditaments, for the recovery of the rents then in arrear, and by more than one of or all the ways and means hereinbefore mentioned, or by such other ways and means as to him the said C. D., or his heirs, shall seem meet, reimburse himself and themselves all such loss, damage, costs, charges, and expenses, as he or they shall or may pay, sustain, be at, or be put unto, for or in respect of or on account of the non-performance by the said A. B., his heirs, executors, or administrators, of the aforesaid covenant, or any part thereof; and do and shall pay the surplus and residue (if any) of the monies which shall from time to time be

raised by the ways and means aforesaid, unto the said A. B., his heirs, appointees, or assigns, for his and their proper use and benefit; and for the purposes aforesaid, or any of them, it shall and may be lawful to and for the said C. D., his heirs, appointees, and assigns, to enter into, make, do, and execute all such contracts, covenants, agreements, conveyances, assurances, acts, deeds, matters and things as to him or them shall seem proper. And it is hereby agreed and declared between and by the said parties to these presents, that all and every the contracts, covenants, agreements, conveyances, assurances, acts, deeds, matters, and things which shall be entered into, made, done, or executed by the said C. D., his heirs or assigns, in pursuance of these presents, shall, although the said A. B., his heirs or assigns, shall not join therein, or assent thereto, be effectually binding and conclusive on him the said A. B., his heirs and assigns. And it is hereby agreed and declared between and by the said parties to these presents, that the receipt and receipts in writing of the said C. D., his heirs or assigns, for any sum or sums of money payable to him or them, under or by virtue of these presents, shall effectually discharge the person or persons to whom the same respectively shall be given, his and their heirs, executors, administrators, and assigns, from being answerable or accountable for the mis-application or non-application, or being in anywise obliged or concerned to see to the application of the money in such receipt or receipts respectively expressed or acknowledged to be received, or from being in anywise bound or concerned to see that any such default in the performance of the covenant aforesaid has been made, or to make any inquiry respecting the same, or otherwise to inquire into the necessity or expediency of any such sale or other disposition. And it is hereby declared that it shall and may be lawful to and for the said C. D., his heirs and assigns, by all or any of the ways and means aforesaid, to reimburse himself and themselves all such costs, charges, and expenses as he or they shall or may sustain, incur, be at, or be put unto, in or about the execution of the trusts aforesaid, or any of them. And it is hereby declared and agreed, that subject and without prejudice in any manner to the aforesaid trusts, the said C. D., his

heirs and assigns, shall stand and be seised of the lands and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, and to pay the rents, issues, and profits thereof unto, and permit the same to be received by, the said A. B., his heirs, appointees, and assigns.

Declaration of trusts of bond to permit principal to remain on security until death of husband is ascertained, or until he die, or until wife, who is tenant for life, make further assurance.

VI. And it is hereby further declared and agreed by and between the said parties to these presents, that the said A. B., his executors and administrators, shall henceforth stand possessed of and interested in the said bond so given and entered into by the said C. D. as aforesaid, and the said principal sum of money and interest thereby secured, Upon trust, to permit the said principal sum of £—— to remain on security of the same bond, till it shall be ascertained that the said E. F. is already dead, or until he, if living, shall depart this life, and the said G. F. shall have made such further assurance as hereinafter mentioned; And upon further trust, that if the said C. D., his heirs and assigns, shall at any time during the life of the said G. F. be disturbed in the enjoyment of the said messuages &c. hereby released or otherwise assured, or intended so to be, by the said G. F., or any person claiming under her; or if the said E. F. is still living, and on or after his death, and when thereunto requested by the said C. D., his heirs or assigns, and at his or their costs and charges, the said G. F. shall not effectually convey and assure the same messuages &c. to and to the use of the said C. D., his heirs and assigns, for the life of the said G. F., then and in either of those cases the said A. B., his executors or administrators, do and shall deliver up the same bond to be cancelled; to the intent that the said C. D. and his heirs may be discharged from the payment of the said principal sum of £——, and the interest, if any, which shall be then due and remain unpaid for that sum; And upon further trust, that subject and without prejudice to the provision hereinbefore contained, the said A. B., his executors and administrators, do and shall receive the interest which from time to time shall become due on the said bond half yearly, and do and shall stand possessed of the said principal sum and interest so to grow due, In trust &c. [*as*

If obligor be disturbed in possession, or no further assurance be made, bond to be cancelled.

To receive and pay interest as wife shall appoint; in default, to her separate use, with remainder to her next of kin.

G. F. shall appoint]; and in default &c. do and shall stand and be possessed of the same principal money and interest, upon the trusts hereinafter declared; that is to say, In trust to pay the same interest when and as or after the same shall become due to the said E. F., or otherwise permit and suffer her to receive the same for her own sole use and benefit, separate and apart &c.; And in case the said G. F. shall die before the receipt of all the said principal money and interest secured by the said bond, and without making any such direction or appointment of the same, Then as to such part of the said principal money and interest so secured as shall be due or payable at her decease, and of which no such direction or appointment shall be made, the said A. B., his executors and administrators, shall stand and be possessed of the same, In trust &c. [*next of kin of G. F.*]

Of a term for indemnifying against portions, &c., and then to attend inheritance.

VII. And it is hereby further directed, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, and it is the true intent and meaning of them and of these presents, that the term of —— years hereinbefore limited to the use of the said A. B., his executors, administrators, and assigns, is limited to him and them, Upon trust for indemnifying all the manors &c. hereby released &c., with their and every of their rights, royalties, members, and appurtenances, (other than and except the manors &c. described in the schedule hereunder written or hereunto annexed), of and from the payment of any contribution towards the portion or sum of £—— maintenance money, and interest, costs, charges, and expenses, raisable or directed to be raised under the trusts of the term of —— years, created by the said hereinbefore in part recited indenture of release, bearing date on or about &c., and thereby limited to the use of the said C. D. and E. F., their executors, administrators, and assigns; and afterwards and subject thereto, Upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, regulations, declarations, and agreements, as by the said last-mentioned indenture of release were declared of and concerning the term of —— years thereby created and limited to the use of the said G. H. and I. K., their exe-

cutors, administrators, and assigns, as far as the same trusts, ends, intents and purposes, powers, provisoes, declarations, regulations, or agreements, in any wise relate to or concern the raising, payment, and application of the said sum of £—— and maintenance money and interest, and the right of survivorship, in the same or the like manner as if such provisions had been repeated in these presents; and subject thereto, and to all mortgages and sales which shall be made in pursuance and in performance of the trusts hereby declared or referred to, the residue of the said term of —— years hereby created shall be held in trust for the said L. M. and his assigns, and the said N. O., his heirs and assigns, and to be assigned and disposed of from time to time as they respectively, according to their respective estates and interests, shall direct or appoint; and in the mean time to attend, wait upon, and go along with the freehold, reversion, and inheritance of the manors &c. comprised in the same term, as the same manors &c. are hereby released &c., and upon no other trust, nor for any other end, intent, or purpose whatsoever.

For indemnifying lands from part of a rent-charge.

VIII. And it is hereby directed, declared, and agreed, by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that the release and appointment hereby made shall severally enure, To the uses, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared of and concerning the same; that is to say, as to, for, and concerning one undivided third part of the said annuity or rent-charge of £—— per annum, In trust for and for the benefit of the said A. B., his heirs and assigns for ever, to the intent, and for the purpose, that the one undivided third part of the said A. B. of and in the said manors &c., hereinbefore more particularly described, and charged and chargeable with the payment of the same annuity or rent-charge of £—— per annum, hereby &c. may be exonerated and indemnified from one undivided third part of the said annuity or rent-charge of £—— per annum, in the same and the like manner as if the same one undivided third part of the same annuity or rent-charge of £—— was extinguished for the benefit of the said A. B.; And as to, for, and concerning the other and

remaining two undivided third parts of the said annuity or rent-charge of £—— per annum, In trust for and for the benefit of the said C. D., his heirs and assigns.

Of part of settled lands, and a term of years therein, for the exoneration of other lands from a charge affecting all the settled lands.

IX. And it is hereby declared and agreed, by and between all the parties to these presents, that the said term of 1000 years, hereby limited to the use of the said A. B. and C. D. as aforesaid, is limited to them, Upon trust, that when and as soon and as often as any sum or sums of money shall be due and payable, either for portions, interest, or maintenance, under or by virtue of the trusts which, by the said recited indenture of release or settlement, bearing date on or about the —— day of ——, are expressed and declared of and concerning the said term of 500 years, now vested in the said E. F. as aforesaid, then and so often they the said A. B. and C. D., or the survivor of them, his executors or administrators, do and shall, by and out of the rents and profits of the manors &c. comprised in the said term of 1000 years, or by mortgage or sale of the same manors &c., or a competent part thereof, or by bringing actions against or making distresses upon all and every or any of the present or future tenants of the same manors &c. for the recovery of the rents then in arrear, or by making entries upon the same manors &c., or by all and every or any one or more of the said ways and means, or by any other ways and means, levy and raise from time to time such sum and sums of money as from time to time shall become due and payable for or in respect of the said portions, and the interest thereof or maintenance in lieu of the same, and also all such damages, costs, charges, and expenses, as they the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, shall incur, expend, and sustain in raising the said sum or sums of money, or any part thereof, or in carrying into execution the trusts of the said term of 1000 years; and in the first place do and shall retain and reimburse to and for himself and themselves, the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in them the said A. B. and C. D., and the survivor of them, his executors, administrators, and assigns; and in the next place do and shall pay and satisfy the said

sum and sums of money (if any) which shall become due and payable for portions, interest, and maintenance, in exoneration and discharge of the said capital messuage &c., To the intent that the said capital messuage &c. may be exonerated or indemnified of and from the payment of the same portions, interest, and maintenance respectively, or any part of the same, or any contribution in respect or on account of the same portions, interest, and maintenance; And upon this further trust, that in the meantime, and until the said sum or sums of money, some or one of them, shall become due and payable, and also from time to time, when and as often as all and every sum and sums of money raisable under the trusts hereof declared, and the said costs, charges, damages, and expenses, shall have been raised or fully satisfied and paid, they the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, do and shall permit and suffer such person or persons as for the time being shall be entitled to the reversion or remainder of the manors &c. comprised in the said term of 1000 years, expectant on the determination of the same term, to receive and take the rents and profits of the same manors &c., to and for his and their own use and benefit; And upon this further trust, that they the said A. B. and C. D., and the survivor of them, his executors and administrators, from time to time, after retaining the sum and sums of money directed to be retained under the trusts hereinbefore expressed and declared, and also the costs, charges, and expenses of raising the same, do and shall pay to the said E. F., his heirs or assigns, or to the person or persons who for the time being shall be entitled to the reversion or remainder of the said manors &c. comprised in the said term of 1000 years, immediately expectant on the same term, or to whom he or they shall direct or appoint, the money (if any) which from time to time shall remain in the hands of the said A. B. and C. D., or the survivor of them, his executors or administrators.

X. Upon trust, that they &c. do, out of the rents, issues, and profits of the said premises, or by demising, leasing, To indemnify and protect a purchaser of

lands from charges under a will.

or mortgaging the same messuages, lands, hereditaments, and premises, or any part thereof, for all or any part of the said term of 2000 years, or by such other ways and means as to them shall seem meet, raise such sums of money as shall be sufficient from time to time to pay and satisfy all the debts of the said A. B., and the annuities and legacies given by his said will, affecting the premises hereby released, &c., and all arrears of the said annuities and interest of the said legacies then unpaid, and the growing payments of such annuities, and of the interest of the said legacies, and all costs, damages, and expenses which shall become chargeable on the said &c., hereby &c., and all other demands arising under the will of the said A. B.; and of and from all loss, costs, charges, damages, and expenses, for or by reason of the said incumbrances, or any of them, shall thereby save harmless and keep indemnified the said &c., hereby, &c. to the said C. D. and his heirs, and also the said C. D., and his heirs, executors, administrators, and assigns for ever.

Of a term (in a partition deed) limited as to the lands allotted to one of the parties in partition, being to raise a specific part of a mortgage debt charged upon the entirety, in exoneration of the residue from so much thereof, by way of owelty (*a*).

XI. And it is hereby agreed and declared between and by the parties to these presents, that the said hereditaments and premises hereinbefore limited to the use of the said A. B. and C. D., their executors, administrators, and assigns, for the said term of 1500 years, are so limited to them, To the end and intent that the said hereditaments and premises comprised in the said term of 1500 years may be a protection and indemnity to all such other of the hereditaments hereinbefore mentioned to be hereby released as were comprised in the hereinbefore recited indenture of the &c., from and against the principal sum of £——, part and parcel of the said principal sum of £——, secured by the said mortgage as aforesaid, and all interest to become due for the same; for which purpose it is hereby agreed and declared, that the

(*a*) There was a mortgage by demise on the greater part of the estates, and the commissioners awarded that this mortgage should be paid in moieties by two of the parties in the partition. A term was limited to each of these parties to the same trustees—one of 1500 years, the other of 1600 years; and the trusts declared as in the text.

said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, by mortgaging, selling, or otherwise disposing of the hereditaments and premises comprised in the said term of 1500 years, or any part thereof, or by and out of the rents, issues, and profits of the same premises, or by all or any of the ways and means aforesaid, or by any other reasonable ways and means, levy and raise the sum of £—— of lawful money of Great Britain, and pay and apply the same in satisfaction and discharge of the sum of £——, part and parcel of the said sum of £——; and do and shall in the mean time, and until the same principal sum of £—— shall be so levied and raised as last aforesaid, by all or any of the ways or means aforesaid, or by any other reasonable ways and means, levy and raise interest after the rate of £5 per cent. per annum for the said sum of £——, and pay and apply the same from time to time towards the discharge of the interest of the said principal sum of £——, when and as the same shall become due or payable; And it is hereby agreed and declared, that, subject to the trusts aforesaid, the said A. B. and C. D., their executors, administrators, and assigns, do and shall permit and suffer the rents and profits of the hereditaments and premises comprised in the said term of 1500 years to be received and taken by the person or persons entitled to the same premises, in remainder or reversion immediately expectant on the said term; Provided always, and it is hereby agreed and declared by and between the parties to these presents, that when the trusts hereinbefore declared of and concerning the said term of 1500 years shall be fully performed and satisfied, or become unnecessary or incapable of effect, and the said A. B. and C. D., and each of them, their and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid, (and which costs, charges, and expenses the said trustees or trustee are and is hereby authorized to raise by all or any of the ways or means aforesaid), the said term of 1500 years shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any part thereof,

in pursuance of the trusts aforesaid) absolutely cease and determine (*a*).

Declaration of trusts of freehold and copyhold. As to particular share in premises contracted to be sold, upon trust to perform and enforce, or abandon and rescind contracts. If abandoned and rescinded, to join with the owners of the other shares in making a partition. Or retain or absolutely sell. Or in the meantime to mortgage.

XII. And it is hereby agreed and declared between and by the said parties to these presents, that the said A. B. and C. D., their heirs, executors, administrators, and assigns, do and shall stand and be seised of, and interested in, the said one undivided one-third part or share, or part or share hereby released and covenanted to be surrendered respectively, of and in all and singular the said freehold and copyhold hereditaments and premises, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same; (that is to say), as to the same one equal undivided third part or share and other part or share and interest, (if any), of which the said R., the now wife of the said W. P., was seised, or to which she was in any manner entitled at the time of the execution of the hereinbefore recited articles, and of her marriage with the said W. P., of and in all and singular such part or parts of the said messuages, lands, tenements, hereditaments, and premises, as have or hath been so contracted to be sold as in the said articles mentioned; Upon trust that they the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, do and shall, with all convenient speed, perform, carry into effect, and enforce the said contracts respectively, or abandon or rescind the same respectively, if occasion shall require, as to him or them shall seem fit; and as to the said equal and undivided one-third part or share, or other part or share, or interest (if any) hereinbefore expressed to be hereby granted and released of and in all other the messuages, lands, tenements, hereditaments, and premises mentioned and described in the said schedule hereunto annexed, and also of and in the hereditaments and premises comprised in the said contracts respectively, or any of them, in case the said contracts or any of them shall be abandoned or rescinded, or shall fail of being carried into effect; Upon trust, that they the said trustees or trustee for the time

(*a*) Add similar declaration of the trusts of the term of 1600 years.

being do and shall, with the consent in writing of the said W. P., and R. his wife, during their joint lives, and after the death of either of them, then with the consent in writing of the survivor of them, during his or her life, and after the decease of the survivor of them, then at the discretion of the said trustees or trustee for the time being, join and concur with the person or persons for the time being seised of or entitled to the other parts or shares of and in the same hereditaments and premises, in making a partition or division of all or any of the said hereditaments and premises, and receive and take any sum or sums of money, by way of equality of partition, or either retain or absolutely sell and dispose of the same part or share, and interest, and premises, either together or in parcels, and either by public sale or private contract, and either with or without the concurrence of the other tenants in common of the said hereditaments and premises, and conjointly with them, or otherwise to any person or persons willing to become the purchaser or purchasers thereof, for such price or prices, sum or sums of money, as to the said trustees, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall seem proper, with full power and authority to purchase in the same, or any of them, or any part thereof, at any such public sale or sales, and re-sell the same, without being accountable for any loss which may happen to be occasioned thereby; or in the mean time do and shall convey, surrender, demise, or otherwise dispose of the same or any part thereof respectively, by way of mortgage to any person or persons willing to advance money on the security of the same or any part thereof; And do and shall, for the completion of the aforesaid contracts, or any or either of them, or of such partition or sale as aforesaid, or otherwise for the purposes hereinbefore mentioned, or any of them, enter into, make, do, and execute all such contracts, covenants, agreements, conveyances, surrenders, and assurances in the law, acts, deeds, matters, and things whatsoever, which to the said trustees, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall seem reasonable (*a*).

(*a*) Add a power for the trustees to receive purchase money; to compound for defects of title; and to enforce specific performance.

To stand possessed of money arising from any partition, sale, mortgage, or disposition, upon the trusts declared by an indenture of even date.

XIII. And it is hereby agreed and declared between and by the said parties to these presents, that the said A. B. and C. D., and their heirs, executors, administrators, and assigns, shall stand and be possessed of and interested in the same sum or sums of money to arise or be produced by any partition, sale, mortgage, or other disposition which shall be made by them in pursuance of these presents, of the said undivided third part or other part or share hereinbefore expressed to be hereby granted and released, and covenanted to be surrendered, of the said freehold and copyhold hereditaments and premises hereinbefore described or referred to, or any of them, or any part thereof, or to be received for or in respect of the personal estate and effects hereby assigned, and of and in all other sum and sums of money which shall come to their hands by virtue of these presents, Upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be mentioned, declared, or contained of or concerning the same respectively, in and by an indenture already prepared and engrossed, and bearing or intended to bear even date with these presents, and made or intended to be made between the same persons as are parties to this present indenture.

In a conveyance to trustees, subject to the trusts of a will.

XIV. To the use of &c.; Nevertheless upon the trusts, and for the ends, intents, and purposes, to which the same messuages &c. are subject under or by virtue or means of the said hereinbefore recited will of the said A. B. deceased, and upon no other trust, and for no other end, intent, or purpose whatsoever.

For partners as in the nature of personalty, and on their partnership account.

XV. In trust for the said A. B. and C. D., their executors, administrators, and assigns, to the intent that the said messuage &c. may be considered as or in the nature of personal estate, and be held in trust for the said A. B. and C. D. respectively, and their respective executors, administrators, and assigns, as part of their partnership stock in trade,

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(Vide post, tit. Powers.) It should also be declared, that the receipts of trustees shall be sufficient discharges to purchasers.

and in the same parts, shares, and proportions as they are, and from time to time shall be, interested in or entitled to their partnership stock in trade, and for that purpose to be sold and converted into money on the expiration or other sooner determination of the said partnership, as part of the partnership effects; with full power and authority to and for the partner or partners for the time being, or the surviving partner, his executors or administrators, to make and complete such sale, and to give effectual discharges for the purchase money, and upon no other trust, nor for any other end, intent, or purpose whatsoever.

For partners as part of their partnership property, and to be sold by surviving partner without concurrence of executors or administrators of partner dying. Purchaser from surviving partner not required to see to application of money, and trustees directed to convey as surviving partner may appoint.

XVI. Upon trust and to the intent that the said messuages or tenements and hereditaments, with the appurtenances, may be and may be deemed as or in the nature of personal estate, and part of the effects of the partnership of the said A. B. and C. D., and for that purpose may be sold, disposed of, and converted into money by the said A. B. and C. D., or by the survivor of them, his executors or administrators, notwithstanding the death of one of them the said A. B. and C. D., without any concurrence of the executors or administrators of the person first departing this life, and without any obligation on the part of the person or persons purchasing the same messuage &c. from the survivor of them the said A. B. and C. D., his executors or administrators, to see to the application of the money to be paid as the consideration of such purchase; And the said [*trustees*], their heirs and assigns, are hereby directed to convey the said messuage &c. as the said A. B. and C. D., or the survivor of them, his executors or administrators, shall from time to time direct or appoint (*a*).

For partners as tenants in common, in the

XVII. In trust for the said A. B., C. D., and E. F. respectively, and their respective executors, administrators,

(*a*) In such a case as this it is desirable to convey the estate to such uses as the purchasers (copartners) shall appoint, and then in default to the use of the trustee in trust &c. as above. (Vide tit. Uses, Art. VIII.) By this means the purchasers will be enabled to convey the property to another without the concurrence of the trustee.

same proportions as they are entitled to capital, and in the nature of personalty, and to be converted into money on dissolution, &c.

and assigns, as tenants in common, and as part of their capital and stock in trade in their business of &c., and in the same parts, shares, and proportions in which they are or shall or may from time to time be entitled to the said capital, and as or in the nature of personalty; and for that purpose to be sold and converted into money on the dissolution or determination of the said partnership, or sooner if the said partners shall think fit.

That lands may be held and disposed of for such purposes as parishioners assembled in vestry shall direct.

XVIII. Unto and to the use of the said A. B. and C. D., their heirs and assigns for ever, Upon the trusts nevertheless, and for the ends, intents, and purposes hereinafter limited, expressed, declared, and contained of and concerning the same; (that is to say), In trust and to the intent that the said messuages, cottages, or tenements, with the appurtenances, may from time to time, and at all times for ever hereafter, be held, used, occupied and enjoyed (a), leased or demised for any term or number of years, or absolutely sold or disposed of in fee-simple; and the rents to be received under such leases, if any, and the money to arise from such sales, if any should be made, to be held and applied in such manner as the parishioners of &c. aforesaid, duly assembled in vestry, shall from time to time, by an order of vestry, direct or appoint, and upon no other trust, nor for any other end, intent, or purpose whatsoever.

To carry a contract into effect, or to release the same and resell.

XIX. As to the said closes, pieces, and parcels of land, so contracted to be sold to the said A. B. as aforesaid, Upon trust that they the said E. F. and G. H., and the

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(a) Or,

"In such manner and for such purposes as the churchwardens and overseers of the poor for the time being of the said parish of &c., with the consent of the major part of the parishioners or inhabitants of the said parish, duly assembled in vestry, or other parish or public meeting, or of so many of them as shall be so assembled, shall from time to time direct or appoint."

survivor of them, and his heirs, do and shall perform the contract of the said C. D., entered into with the said A. B., according to the true intent and meaning of the same contract; And do and shall, if he or they shall think fit, compel and enforce a specific performance of that contract, and upon performance of the same contract, do and shall receive the money to be paid by the said A. B., his heirs, executors, administrators, or assigns, as the price or consideration of the said closes, lands, and hereditaments, and all interest due and to become due for the same money or otherwise; and, in his or their discretion, do and shall release and discharge the said A. B., his heirs or assigns, of and from the performance of the same contract; And as to the same closes, lands, and hereditaments, in case the said A. B., his heirs or assigns, shall be released or discharged from the performance of the same contract, or the same contract shall be determined or rescinded by any other means, and also as to all the residue of the said closes, lands, and hereditaments hereby released or otherwise assured, or intended so to be, &c.

To convey to purchasers their particular shares, sold under a decree.

XX. As to such parts of the premises as have been sold as aforesaid, In trust to convey the same to the respective purchasers thereof, and to permit them respectively to receive the rents and profits of the parts purchased by them respectively, from the respective times they shall respectively be let into possession thereof, under the order of the said Court of Chancery, if they should be let into such possession thereof previous to the execution of the conveyance to them; and subject to the trusts aforesaid, Upon trust to stand possessed of the premises hereby &c.; In trust for the purposes expressed in the said will and codicil of the said A. B. deceased.

To convey to such persons as owner shall direct.

XXI. Upon trust that the said A. B., his heirs and assigns, do and shall from time to time convey and assure the said pieces or parcels of land, messuages or tenements, and hereditaments, or any part or parts thereof, To such person or persons, and in such manner, as the said C. D., his heirs and assigns, shall from time to time direct or

appoint, and in the mean time, and until such conveyance or assurance shall be made, do and shall stand and be seised of and interested in the said pieces &c., In trust for the said C. D., his heirs and assigns, and upon no other trust &c.

Declaration of trusts for sale of freehold and copyhold in mortgages.

XXII. And it is hereby agreed and declared, between and by the said parties to these presents, that they the said A. B. and C. D., their heirs, executors, administrators, and assigns, shall stand and be seised of the said messuages, lands, and other hereditaments, hereinbefore appointed and released, and covenanted to be surrendered, or expressed and intended so to be, Upon the trusts, and to and for the intents and purposes hereinafter expressed or declared of and concerning the same; (that is to say), Upon trust, that if the said E. F., his heirs, executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said A. B. and C. D., their executors, administrators, or assigns, the said sum of £——, on the said —— day of —— (*a*), and do and shall, in the meantime, well and truly pay or cause to be paid interest for the same, after the rate, on or at the days or times, and in manner hereinbefore appointed for payment of the same respectively, or within one calendar month next after the same days respectively, then and in such case, and from and immediately after such payment so made as aforesaid, they the said A. B. and C. D., their heirs, executors, administrators, or assigns, shall and will, upon the request and at the proper costs and charges of the said E. F., his heirs or assigns, re-convey and surrender the messuages, lands, and other hereditaments hereinbefore appointed and released and covenanted to be surrendered, or expressed and intended so to be, with their appurtenances, unto the said E. F., his heirs or assigns, or as he or they shall in that behalf order and direct, free from all incumbrances made, done, or committed by the said A. B. and C. D., their heirs, executors, administrators, or assigns, or any of them: But in case the said E. F., his heirs, executors,

(*a*) If a banker's security, say "On demand."

administrators, or assigns, shall make default in payment of the interest of the said sum of £——, or any part thereof, for the space of one calendar month next after any of the said days or times hereinbefore mentioned and appointed for payment thereof, or shall make default in payment of the said principal sum of £——(*a*), on the day or time hereinbefore appointed for payment of the same, then and in any such case, or at any time thereafter, although no advantage shall have been taken of any previous default, Upon trust, that they the said A. B. and C. D., their heirs or assigns(*b*), do and shall (*c*) absolutely sell and dispose of the said messuages, lands, and other hereditaments hereinbefore appointed and released, and covenanted to be surrendered, or expressed and intended so to be, with their appurtenances, or any of them (*d*), either altogether or in parcels, by public auction or private contract, for such price or prices as to the said A. B. and C. D., their heirs and assigns, shall seem proper, with liberty to buy in all or any part of the premises at any auction, and rescind any contract for sale either by public auction or private contract, and afterwards to sell the premises so bought in or comprised in any such contract, without being answerable for any difference in price or other loss; and shall, for the purposes aforesaid, or any of them,

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(*a*) If a banker's security, say "On the demand thereof."

(*b*) According to this form, an assignee of the mortgage is clearly authorized to exercise the power of sale. To obviate, however, any doubt on this head, the following clause is sometimes added:—

"And further, that the trust or power of sale hereinbefore contained shall not be deemed personal to the said A. B. and his heirs, [*or*, his executors or administrators], but shall or may be exercised by any person or persons to whom this present security shall be transferred."

(*c*) When the mortgagee is not the trustee for sale—

"Upon the request of the said [*mortgagee*], his heirs or assigns."

(*d*) If subject to an annuity—

"Either subject to or with an agreement that the same shall be discharged from the said annuity or yearly sum of £——."

enter into, make, and execute all such covenants, contracts, agreements, conveyances, assurances, deeds, acts, matters, and things, as to the said A. B. and C. D., their heirs or assigns, shall seem meet; And it is hereby agreed and declared, that all and singular such contracts, covenants, agreements, conveyances, surrenders, and assurances, deeds, acts, matters, and things, as shall be entered into, executed, had, made, or done by the said A. B. and C. D., their heirs or assigns, by virtue of these presents, shall or may be entered into either with or without the concurrence of the said E. F., his heirs, executors, administrators, and assigns, as they the said A. B. and C. D., their heirs or assigns, shall think proper, and shall, whether the said E. F., his heirs, executors, administrators, or assigns, shall or shall not join therein, or assent thereto, be to all intents and purposes whatsoever completely valid and effectual, and bind him the said E. F., his heirs, executors, administrators, and assigns, and all persons claiming or to claim by, from, under, or in trust for him, them, or any of them; it being the clear intention of the parties hereto to enable a sale of the said premises by the said A. B. and C. D., their heirs or assigns, alone, any rule of equity to the contrary thereof notwithstanding. And it is hereby agreed and declared between and by the said parties to these presents, that the receipt or receipts in writing of the said A. B. and C. D., their heirs, executors, administrators, or assigns, for any sum or sums of money, payable to him or them under or by virtue of these presents, shall be a sufficient and effectual discharge and sufficient and effectual discharges for the same respectively, or for so much thereof respectively as in such receipt or receipts respectively shall be expressed to be received, and that the person or persons, to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application of the money therein mentioned, or acknowledged to have been received, or to ascertain or inquire into the necessity or expediency of any such sale, or whether such default as aforesaid hath been made in payment of the said sum of £—— and interest, or

any part thereof. And it is hereby also agreed and declared, between and by the said parties to these presents, that they the said A. B. and C. D., their heirs, executors, administrators, and assigns, shall stand and be possessed of and interested in all and singular the sum and sums of money, which shall arise from or be produced by any sale or sales which shall be made in pursuance of these presents; Upon trust in the first place to retain to, and reimburse themselves all costs, charges, and expenses, which they the said A. B. and C. D., their heirs, executors, administrators, or assigns, shall and may sustain or be put unto in or about the aforesaid sale or sales, or otherwise in the execution of the trusts hereby created, or any of them; And shall, in the next place, pay and retain to themselves the said sum of £——, or such part thereof as shall then remain unpaid, and all interest due in respect thereof, (although the said —— day of —— shall not then have arrived), and all costs, charges, and expenses, which shall be incurred or sustained by them or either of them, in consequence of such default as aforesaid having been made in payment of the said sum of £——, or the interest thereof; And do and shall pay the surplus (if any) of the said trust monies, which shall remain after answering and satisfying the trusts and purposes aforesaid, unto the said E. F., his heirs, executors, administrators, or assigns, to and for his and their own use and benefit. And it is hereby declared (*a*), that subject and without prejudice in

(*a*) Where one incumbrancer is to have priority over the other, the following declaration should be inserted:—

"And it is hereby expressly agreed and declared, between and by the parties hereto, that the said sum of £——, and the interest thereof, shall be considered as an incumbrance, and charged upon the messuages, lands, and other hereditaments hereinbefore appointed and released and covenanted to be surrendered, or expressed and intended so to be, prior to and to take precedence of the said sum of £—— and interest, and that no part of the monies to arise from any sale hereinbefore directed to be made shall be applied in discharge of the said sum of £—— and interest, until the whole

any manner to the trusts aforesaid, or any of them, the said A. B. and C. D., their heirs and assigns, shall stand and be seised of the said messuages, lands, and other hereditaments in trust for the said E. F., his heirs and assigns.

Another form.

XXIII. Upon trust to secure to the said A. B. and C. D., their executors, administrators, and assigns, the payment by the said E. F., his heirs, executors, or administrators, of the principal sum of £——, and to secure to the said G. H. and I. K., their executors, administrators, and assigns, the payment by the said E. F., his heirs, executors, or administrators, of the principal sum of £—— upon the —— day of —— which will be in the year ——, and the payment of interest for the same sums respectively, at the rate of £5 for £100 for a year, from the day of the date of these presents, half-yearly upon the —— of —— and the —— of —— during the continuance of this security, without any deduction or abatement for or in respect of any present or future taxes or impositions by authority of Parliament, or otherwise, or of any other matter; And upon further trust, that if default shall be made in payment of the money hereby secured at the time appointed for payment thereof as aforesaid, or in payment of the interest thereof, or any part of the same respectively, for one calendar month after the time above appointed for payment of such interest, and demand thereof, by action or otherwise, and the same principal sum or interest, or any part of the same respectively, shall remain unpaid for the space of six calendar months next after the person or persons entitled to the same shall have required payment of the principal and interest secured to them respectively by these presents, by a notice in writing, to be given or left to or for the said E. F., his heirs, executors, or administrators, at his last known residence or abode in England, or at or upon any dwelling-house, subject to this security, or, in case there shall be no

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of the said sum of £—— and interest shall have been fully paid and satisfied; and subject and without prejudice in any manner &c. [*as above*].

dwelling-house, to be affixed upon any part of the premises hereby assured, or intended so to be, and either before or after the —— day of ——, it shall be lawful for the said L. M. and N. O., or the survivor of them, his executors or administrators, or the trustees or trustee for the time being of these presents, and the trustees or trustee for the time being are hereby directed, upon the request of the said A. B., C. D., G. H., and I. K., or of any or either of them, or the executors, administrators, or assigns of either of them, without any further concurrence or consent of the said E. F., or any other person, to sell the said pieces or parcels of land, messuages, hereditaments, and premises hereby assured or intended so to be, or any of them, or any part thereof, together or in lots, and at one or several times, by public auction or private contract, and for the best price that can be reasonably obtained, with liberty to the said L. M. and N. O., or the survivor of them, his executors or administrators, or the trustees or trustee for the time being, to buy in at any auction, and to rescind any contract for sale at any auction or by private contract, and afterwards to sell the premises bought in or comprised in such contract by public auction or private contract, without being liable for any loss; and the said L. M. and N. O., their heirs or assigns, or the trustees or trustee for the time being, shall assure the premises when sold to the purchaser or purchasers, or as he or they shall direct. And it is hereby declared, that the person or persons who, with the privity of the said A. B., C. D., G. H., and I. K. respectively, their respective executors, administrators, or assigns, shall pay any purchase-money, rents, or profits of the premises hereby assured or intended so to be, unto the said L. M. and N. O., or the survivor of them, his executors, administrators, or assigns, or to the trustees or trustee for the time being of these presents, shall not be obliged to see the application of the same, and that every receipt to be given by the said L. M. and N. O. or the survivor of them, his executors, administrators, or assigns, or the trustees or trustee for the time being, with the privity of the said A. B., C. D., G. H., and I. K. respectively, their respective executors, administrators, or assigns, shall be an effectual discharge for what shall be therein expressed to have been received,

and that no purchaser or other person shall be obliged to ascertain that such demand of the principal and interest secured by these presents has been made, or that there has been default in payment, or that any sum is due upon the security of these presents, and that the declarations of the said A. B., C. D., G. H., and I. K. respectively, their respective executors, administrators, or assigns, as to those circumstances, or any other relating to their respective securities, shall be sufficient evidence for every purchaser and other person dealing with the said L. M. and N. O., and also for the trustees or trustee for the time being. And it is hereby declared and agreed, that the said L. M. and N. O., their executors and administrators, and the trustees or trustee for the time being, shall stand possessed of the money arising by the sale of the premises hereby assured or intended so to be, and the rents and profits (if any), which shall be received by them, from the same; Upon trust in the first place to discharge the costs and expenses attending the execution of the trusts hereby declared, and then to pay to the said A. B., C. D., G. H., and I. K. respectively, their respective executors, administrators, and assigns, the said several principal sums of £—— and £——, and the interest thereon respectively, intended to be secured by these presents; and, subject to the trusts and purposes hereinbefore expressed, the said L. M. and N. O., their heirs or assigns, or the trustees or trustee for the time being of these presents, shall hold the premises hereby assured or intended so to be, and the money to arise by the sale thereof, Upon trust for the said E. F., his heirs and assigns, and to be conveyed and disposed of as he or they shall direct, and so that the money arising from such sale may be and be deemed real estate, for the benefit of the person or persons to whom the hereditaments comprised in such sale shall belong at the time of such sale; and the same hereditaments shall not be deemed or considered as converted into personalty by these presents.

In a mortgage by way of assignment of copyright of

XXIV. Upon trust that the said books, when printed, shall be delivered out to Messrs. ——, or other booksellers or agents, for sale, in such manner as is usual in the

publication of books of the like nature, or as shall be agreed on by and between the parties to these presents; And upon trust that the said A. B., his executors, administrators, and assigns, do and shall, by and out of the said legacy, share of residue, and the interest due and to become due for the same, and also by and out of the monies to be received from the produce of the said books when sold, and also by a sale at any time after the expiration of two years from the day of the date of these presents, and either by public auction or private contract, of the said copyright of the said books, and of the books remaining unsold, and also the right and interest in and to the said legacy &c., or a competent part thereof, raise and levy the said sum of £——, and the interest thereof, or so much of the same sum and interest as shall remain unpaid, and also the costs, charges, and expenses attending the execution of the trusts hereby reposed in the said A. B., his executors, administrators, and assigns; And do and shall retain and take the said costs, charges, and expenses, and also the said sum of £——, and the interest thereof, or so much of the same sum and interest as shall then remain unpaid; And do and shall pay the overplus, if any, of the monies to be raised by the means aforesaid, unto the person or persons who would have been entitled to the same in case these presents had not been made and executed; And do and shall, after payment of the said sum of £—— and interest, and the said costs, charges, and expenses, re-assign the said copyright, books and printed paper, legacy, &c., and other the premises hereby assigned, or intended so to be, and every part of the same, so far as the same shall remain unsold, unto the person or persons who would have been entitled to the same in case the assignment hereby made had not been made.

books, legacy, &c.

XXV. Upon trust that the said A. B., his executors, administrators, or assigns, of his or their own proper authority, without any consent or concurrence of the said C. D., his executors, administrators, or assigns, Do and shall forthwith, and at such time or times as he or they in his or their discretion shall think fit, make sale, and

To sell leasehold estate, and to pay all expenses, taxes, &c.; and if sold, with agreement to be discharged from an annuity to

which it is subject, to stand possessed of the monies upon the trusts declared in an indenture of even date.

absolutely dispose of the said several leasehold messuages or tenements, hereditaments and premises, hereby assigned or otherwise assured, or intended so to be, or any part of the same, for all the residue of the said term therein which shall be then to come and unexpired, either subject to, or with an agreement that the same shall be discharged from, the said annuity or yearly sum of £——, and either altogether and in one lot, or by parcels and in several lots, and either by public auction or by private contract, or partly by public auction and partly by private contract, as the said A. B., his executors, administrators, or assigns, shall think fit, with liberty, if he or they shall think fit, to buy in the said premises, and resell the same, at any future auction or by private contract, without being liable to answer for any loss or diminution in price by such resale; And upon this further trust, that the said A. B., his executors, administrators, or assigns, do and shall assign or otherwise assure the same when sold unto the person or persons who shall agree to become the purchaser or purchasers thereof, or to such person or persons as he, she, or they shall appoint; And upon this further trust, that the said A. B., his executors, admininistrators, and assigns, do and shall, by, with, and out of the rents and profits (if any) of the said messuages or tenements, hereditaments and premises, which shall be received by him and them respectively, and also the money which shall arise by and from such sale or sales respectively, In the first place, deduct, retain, satisfy, and pay unto and for himself and themselves respectively the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them, and the money which he and they respectively shall expend or lay out for the reserved rent, taxes, and repairs of the said premises, or for renewing the benefit of any policy or policies of insurance of the said premises against loss or damage by fire, or in or about any suit or suits at law or in equity, for obtaining possession of the said premises, or any of them, or enforcing the performance of any contract or contracts, to be entered into with any person or persons who shall agree to become the purchaser or purchasers of the said premises, or any of them; And in the next

place, do and shall pay and satisfy all the expenses attending the preparing and executing of these presents; And if the said premises comprised in the firstly hereinbefore recited indenture of lease shall be sold with an agreement that the same shall be discharged from the said annuity or yearly sum of £——, then upon this further trust, that the said A. B., his executors, administrators, and assigns, do and shall stand and be possessed of all the residue of the said monies, after performance of the trusts hereinbefore contained, Upon the several trusts, and for the ends, intents, and purposes which are declared and expressed of and concerning the same, in or by a certain indenture bearing even date herewith, and made or expressed to be made between &c.

Trusts (in a conveyance in trust for sale by way of mortgage), where lands were conveyed, subject to numerous scheduled incumbrances. (After trusts to retain expenses).

XXVI. And if all or any of the said premises shall be sold with an agreement that the same shall be discharged from the several annuities and other incumbrances which at the time of such sale shall be subsisting, and affect the property so sold, Then upon this further trust, that the said A. B., his heirs, executors, administrators, and assigns, do and shall apply a competent part of the money arising from the sale of the said premises in the repurchase of such annuities, or the satisfaction and discharge of such incumbrances respectively, and in the next place, do and shall, by, with, and out of the residue of the same monies, or if the same premises respectively, or any of them, shall be sold subject to the several incumbrances then subsisting, and affecting the same, then by and out of all the same monies, (after paying and retaining such costs, charges, and expenses as aforesaid), retain and pay unto and for himself and themselves &c.

In assignment of share of partnership trade for securing loan and interest by instalments.

XXVII. Nevertheless upon trust, that the said A. B., his executors and administrators, do and shall, by and out of the said goods, monies, and effects, gains and profits, retain and take, to and for himself and themselves, the full sum of £—— by instalments, as hereinafter mentioned; (that is to say), by successive quarterly payments of £——, until the whole of the said sum of £—— shall be paid and satisfied, together with interest after the rate of £5 per cent. per an-

num, for so much of the said sum of £—— as from time to time shall remain unpaid, such interest to be payable quarterly, and to be computed from the —— day of ——; and the first of the said quarterly payments of the said sum of £—— to be made on the —— day of —— next ensuing, together also with all such costs, charges, and expenses as the said A. B. shall sustain or incur by reason of the non-payment of any of the said several instalments and interest, on the days or times when the same shall be payable, or in or about the execution of the trusts of these presents; and, subject to the trusts hereinbefore contained, Upon trust for the said C. D., his executors, administrators, and assigns.

In a transfer of a West Indian mortgage, where the money was advanced by bills of exchange, payable at distant dates; the object being to secure the payment of the bills to the original mortgagee, as well as to give the persons accepting the bills the benefit of the securities, so far as the bills should be honoured.

XXVIII. And it is hereby agreed and declared, between and by the parties to these presents, as far as they respectively are interested, that the said A. B. and C. D., their heirs, executors, administrators, and assigns respectively, shall stand and be possessed and seised respectively of, and interested in, as well the said sum of £——, and the interest thereof, and the two last-mentioned bonds and other securities for the same, as also the said plantation, slaves, stock, and all other the hereditaments and premises hereby released and assigned respectively, or intended so to be, and every part thereof, upon and for the trusts, intents, and purposes following; (that is to say), Upon trust, in the first place, for securing unto the said E. F. and G. H. [*mortgagees' executors*], their executors, administrators, and assigns, the due payment of the said two bills of exchange for the said sums of £—— and £——, when and as the same shall respectively become payable as aforesaid, and all other costs, damages, and expenses to be sustained or incurred by them or either of them, by reason of any non-payment thereof respectively; And, in the second place, when and as the said I. K. and L. M. [*acceptors*], their executors, administrators, and assigns, shall pay the said two sums of £—— and £——, making together the sum of £——, and the interest for the same, in discharge of the said bills of exchange, or any costs, charges, or expenses for or on account of the same, Upon trust for securing to them the said I. K. and L. M., their executors, administrators, and assigns, the repayment

of the sum of £——, being the amount of the said aggregate sum of £—— and the interest thereon, and also any such costs, charges, or expenses as aforesaid, with interest for the same respectively, from the respective times of advancing the same until the repayment thereof, after the rate of £5 per cent. per annum; And also upon trust for securing to them the said I. K. and L. M., their executors, administrators, and assigns, the repayment of the said sum of £——, by them this day paid and satisfied to the said N. O. [*another mortgagee*], in his individual capacity as aforesaid, with interest for the same sum from henceforth, after the said rate of £5 per cent. per annum: And for effecting the several purposes aforesaid, Upon trust, or to the intent that they the said A. B. and C. D., or the survivor of them, their or his executors, administrators, or assigns, do and shall, at the request in writing of the said E. F. and G. H., their executors, administrators, or assigns, or of the said I. K. and L. M., their executors, administrators, or assigns, at any time or times after default shall be made in payment of the several monies hereby secured as aforesaid, or any of them, or the interest thereof, or any part thereof respectively, call in and enforce the payment of the said sum of £—— hereby assigned, and the interest thereof, or any part thereof, either from the heirs, executors, or administrators of the said R. S., or any other person or persons liable thereto, or by resorting to the said plantation and other premises whereon the same are secured as aforesaid, or by any other legal and proper means, or else shall and do assign and transfer the same sum, with the several securities for the same or any part thereof, unto any person or persons willing to advance the monies due thereon, or which shall be so required to be raised as aforesaid, or otherwise do and shall sell and dispose of the said sum of £—— and interest, and the securities for the same, or any part thereof, to any person or persons whomsoever, either by public sale or private contract, for the best price or prices in money that can be reasonably had for the same; and thereupon and in every such case do and shall make and execute, or cause to be made, done, and executed, all necessary assignments and conveyances of the said sum of £——, or any part thereof, and the interest and securities for the same, to

the person or persons advancing or purchasing the same sum or any part thereof, or as he or they shall order and direct; and do and shall, by and out of the monies to be raised by any of the means aforesaid, pay and satisfy, in the order and course aforesaid, the several principal and interest.

To effect an insurance on the falling in of one of the lives, and pay premium out of the rents and profits. (In a mortgage of leasehold for lives by way of trusts for sale).

XXIX. And upon this further trust, that in case any one of the said A. B. &c. shall happen to die during the continuance of the said sum of £—— or any part thereof, or the interest thereof or any part thereof, upon this present security, Then he the said C. D., his heirs, executors, administrators, or assigns, do and shall from time to time, in the mean time, till such sale as aforesaid, or, which shall first happen, in the mean time, till the lease of the said messuage &c. hereby released or otherwise assured, shall be renewed for another life in the place of the life so dying, insure any sum not exceeding £—— in any one of the public offices of insurance in London or Westminster, upon any one of the surviving lives, or upon the survivor of the same lives; and so from time to time, when and as often as any one of the three subsisting lives for the time being shall happen to depart this life: And do and shall retain the premiums to be paid for such insurance, and also the costs, charges, and expenses of and attending the same insurance, and such renewal, by and out of the said rents and profits of the said messuages &c., and the money to arise from such sale or sales as aforesaid (*a*).

(*a*) As a distinguished writer (M'Culloch's Com. Dict., p. 709) has lately cast a doubt upon the legality of the condition inserted in the policies of certain assurance offices (the Guardian and the Albion), viz. "that the responsibility of the individual members shall, in all cases, be limited to their respective shares," I take this occasion to observe, that the late Mr. Butler was of opinion that if, both in the proposals and the policies of an insurance company, it is expressed that the capital stock of the company shall be charged with the debts of the company, and that no member is to be liable to any demands on the company beyond his share in the company's stock, the insured could not have any demand at law or in equity on the members beyond their respective shares. Mr. Butler, too, had attended several consultations on this subject with persons of the first eminence, who were all of that opinion.

To raise costs to be taxed as between attorney and client.

XXX. Upon trust, that he the said A. B., his executors, administrators, and assigns, do and shall, after deducting the said sum of £——, pay and discharge to C. D. and E. F., of &c., their executors or administrators, or to their attorney or agent, the costs of the said C. D. and E. F. in the said actions of debt and ejectment, and suit in equity, as the same costs shall be taxed as between attorney and client, by the respective proper officers of the several courts in which the said actions and suits respectively have been brought, commenced, and instituted.

Of an annuity for an insurance company.

XXXI. And it is hereby declared and agreed, by and between the said parties to these presents, as far as they respectively are interested, that the said annuity or yearly sum of £——, is granted to the said A. B., his executors, administrators, and assigns, In trust for the said company, and to be assigned or transferred and disposed of as the directors for the time being of the same company, or a competent number of them, according to the order and constitution of the same company, shall direct or appoint.

Trusts of term for securing annuity.

XXXII. Upon the trusts nevertheless, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or declared of or concerning the same, that is to say; Upon trust that he the said A. B., his executors, administrators, and assigns, do and shall permit the said C. D., and his assigns, to receive and take the rents, issues, and profits of the said messuages, lands, and other hereditaments, until the said annuity, yearly rent, or sum of £——, or some part thereof, shall be in arrear or unpaid by the space of forty days next after any of the days or times whereon the same ought to be paid as aforesaid; and when and so often as the said annuity, yearly rent, or sum of £——, or any part thereof, shall be in arrear or unpaid by the space of forty days next after the same shall become payable, do and shall, by and out of the rents, issues, and profits of the said messuages, lands, and other hereditaments, or by demising, leasing, mortgaging, or selling the same premises respectively, or any part thereof respectively, for

all or any part of the said term, or by bringing any actions against the tenants or occupiers of the said premises, for the recovery of the rents, issues, and profits thereof, or by more than one of or all the ways and means aforesaid, or by such other ways and means as to him or them shall seem meet, levy and raise such sum and sums of money as will be sufficient, or as he or they shall think expedient or proper to raise for paying and satisfying unto the said E. F., his executors, administrators, or assigns, the said annuity, yearly rent, or sum of £——, or such part thereof as shall be so in arrear and unpaid, and all costs, charges, and expenses whatsoever, which the said A. B. and the said E. F., or either of them, their, or either of their executors, administrators, or assigns, shall or may sustain, expend, be at, or be put unto, by reason of the non-payment thereof, or otherwise in the execution of the trusts of the said term of —— years; And do and shall pay and apply the money so to be levied and raised, or a competent part thereof, in or towards the satisfaction of the said annuity or yearly sum of £——, or such part thereof as shall be so in arrear and unpaid as aforesaid, and of the said costs, charges, and expenses accordingly; And do and shall pay the residue and surplus thereof (if any) unto the said C. D., his executors, administrators, or assigns, for his or their proper use and benefit.

Appointment of receiver for securing payment of annuity.

XXXIII. And it is hereby agreed and declared, between and by the parties to these presents, that all and every the rents, issues, and profits which shall be so received, shall be applied upon the trusts, intents, and purposes, and in the manner hereinafter mentioned and declared; (that is to say), Upon trust that he the said A. B. do and shall, out of the said rents, issues, and profits of the said manors, messuages, lands, and hereditaments, which he shall so receive by virtue of these presents, in the first place to pay all taxes, rates, assessments, ground rents, duties, impositions, and other the landlord's necessary outgoings and expenses whatsoever, taxed, charged, rated, assessed, and imposed on the said manors, messuages, lands, and hereditaments, or any of them, or on the owners, tenants, or occupiers of the

same, for or in respect thereof or any part thereof; And in the next place, do and shall pay or cause to be paid unto the said E. F., his executors, administrators, or assigns, the said annuity, yearly rent-charge, or sum of £——, in the proportions, on and at the days or times, and in the manner by the said hereinbefore in part recited indenture of even date herewith mentioned and appointed for payment of the same respectively; And do and shall pay or cause to be paid to the said C. D., his executors, administrators, or assigns, or to such person or persons as he or they shall in that behalf direct or appoint, all the clear residue and surplus of the rents and profits of the said hereditaments and premises, which shall from time to time remain, after answering the purposes aforesaid, and deducting and retaining out of such residue and surplus, for his own use, so much and such sums of money as he shall reasonably deserve as a compensation for his care, pains, trouble, and expense, in receiving and paying the said rents and profits in the manner and for the purposes aforesaid, not exceeding —— shillings in the pound on the gross amount of the rental for the time being.

In appointment of receiver for securing principal and interest.

XXXIV. And it is hereby agreed and declared, between and by the parties to these presents, that all and every the rents, issues, and profits, which shall be so received by the said A. B. as aforesaid, shall be applied upon and for the trusts, intents, and purposes hereinafter mentioned; (that is to say), Upon trust that he the said A. B. do and shall, by and out of the same, in the first place, retain for his own use and benefit, and as a compensation for his trouble, one shilling in the pound on the gross amount thereof; and do and shall, in the next place, thereout pay or retain all the expenses of preparing and perfecting these presents, and all costs and expenses which shall be incurred in commencing, prosecuting, or defending any action or actions, suit or suits, or proceeding in the execution of these presents, or which he the said A. B. shall or may otherwise be put unto, in or about the execution of the trusts hereby in him reposed; And do and shall, until default as aforesaid shall be made by the

said C. D. in payment of the said sum of £—— and interest, or any part thereof respectively, on or at the days or times, and in the manner in the said hereinbefore in part recited indenture of mortgage of &c. provided for payment thereof respectively, or in payment of the rents, taxes, and other rates and charges payable in respect of the said messuages or tenements, or in performance of the covenants in the said firstly hereinbefore in part recited indenture of lease reserved and contained, on the tenants' or lessees' part to be paid, observed, and performed, lay out and invest the surplus of the said rents, issues, and profits, in the name of him the said A. B., in the parliamentary stocks or public funds of Great Britain; and do and shall stand and be possessed of and interested in the money so to be laid out and invested as aforesaid, and the stocks or funds in or upon which the same shall be laid out or invested, and the interest, dividends, and annual produce thereof, Upon trust, until any such default as aforesaid shall be made by the said C. D. and his assigns, for his and their own use and benefit; and immediately after every such default as aforesaid shall be made by the said C. D., he the said A. B., his executors, administrators, or assigns, shall stand possessed of and interested in all the said monies so to be invested as aforesaid, and the interest, dividends, and annual produce thereof, and also of and in all the rents, issues, and profits of the said messuages and tenements, which afterwards come to his or their hands, after deducting therefrom his aforesaid salary as receiver, and the expenses of the trust hereby created; In trust for the better securing to the said E. F., his executors, administrators, and assigns, the payment of the said sum of £—— and interest, and all costs, charges, damages, and expenses, which he or they may sustain or be put unto by reason of the non-payment thereof; and for that purpose to pay, apply, transfer, and dispose of the said trust monies, stocks, rents, issues, and profits, as he or they shall direct or appoint, subject and without prejudice to the trusts aforesaid, In trust for the said C. D., his executors, administrators, and assigns.

XXXV. Upon trust, that he the said A. B. do and shall, by and out of the same, in the first place, pay or retain all costs, charges, and expenses of preparing and perfecting these presents, and also all costs, charges, and expenses which shall be incurred in commencing, prosecuting, or defending any actions or suits, or other proceedings, in the execution of these presents, or which he the said A. B. shall or may otherwise be put to in or about the execution of the trusts hereby in him reposed; And do and shall, in the next place, pay and keep down all the interest which shall, from time to time, become due and payable for or in respect of the said sum of £——, or for or in respect of such part thereof as shall, from time to time, remain unpaid during the continuance of this security; And do and shall, in the next place, if he shall think it expedient so to do, but without releasing the said C. D. from his covenant in that behalf hereinbefore contained, pay the annual premiums upon the said policy of assurance hereinbefore assigned, or expressed and intended so to be, so as to keep the same on foot during the life of the said C. D.; And do and shall, in the next place, out of the said rents, issues, and profits, pay unto the said C. D. or his assigns the clear annual sum of £——, without any deduction or abatement whatsoever; And do and shall, in the next place, if he shall think proper so to do, but without releasing the said C. D. from his covenant in that behalf hereinbefore contained, pay and apply the said rents, issues, and profits in reduction and part discharge of so much of the said principal sum of £—— as he the said A. B. shall, from time to time, think proper and expedient to pay off and discharge; And do and shall pay all the residue of the said rents, issues, and profits unto the said C. D. and his assigns, or as he and they shall direct or appoint, to and for his and their own absolute use and benefit.

Another form, where mortgagee is appointed receiver.

XXXVI. And it is hereby agr eed anddeclared, between and by the parties to these presents, that he the said A. B., his executors, administrators, and assigns, shall stand and be possessed of and interested in all and singular the premises hereinbefore assigned, or expressed and intended so to be, and of and in their appurtenances, for all the residue now

Declaration of trusts of several attendant terms in favour of a purchaser.

to come and unexpired of the said several terms of —— years, —— years, and —— years respectively; and that all and every other person or persons in whom the lands and other hereditaments hereinbefore assigned, or expressed and intended so be, or any of them, or any part thereof, are, is, can, shall, or may become vested for any term or terms of years, or chattel interest or interests whatsoever, shall stand and be possessed of and interested in the same premises respectively for all the said term or terms of years, chattel interest and interests respectively, In trust (*a*) for the said C. D., his heirs, appointees, and assigns, and to assign and dispose of the same as he or they shall, from time to time, direct or appoint; And in the mean time, and subject thereto, In trust to permit the residue and remainder of the said several terms of —— years, —— years, and —— years, and of the said other term or terms, interest or interests respectively, to wait upon and attend the reversion, freehold, and inheritance of the said premises therein respectively comprised, according to the uses declared thereof by the said indenture of even date herewith, so as to go along with and be subservient to the same, and to protect and defend the same from all mesne incumbrances, if any such there be.

Another form.

XXXVII. Upon trust for the said C. D., his heirs, appointees, and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint, and in the mean time to attend, wait upon, and go along with the freehold, reversion, and inheritance of the same premises, so that the same terms may be subservient to the uses, trusts, ends, intents, and purposes hereby limited, expressed, and declared of the same premises, to the end that the same freehold, reversion, and inheritance may, by means of the said terms, be protected from and against all incumbrances, if any such there are, mesne and subsequent to the creation of the same terms.

(*a*) If great conciseness is desired, say—

"In trust for the said C. D., his heirs, appointees, and assigns, and to attend the inheritance, and to protect the same against mesne incumbrances."

In assignment of term to attend the uses of a settlement.

XXXVIII. In trust, nevertheless, to attend, wait upon, and be subservient to the reversion, freehold, and inheritance of the same manors and hereditaments, according to the several uses, powers, and estates, raised, limited, created, or declared of and concerning the same, in and by the said indenture of release and settlement of the —— day of ——, and in aid or support thereof, and for the benefit of the several persons interested or to be interested, under such uses, powers, and estates, and the execution thereof respectively, in order to protect the same freehold reversion and inheritance from and against all charges and incumbrances, if any such there be, mesne and subsequent to the creation of the same term.

Declaration of trusts of term assigned to attend, where the estate is conveyed in moieties to uses.

XXXIX. And it is hereby agreed and declared, between and by the parties to these presents, that the said C. D., his executors, administrators, and assigns, shall stand and be possessed of and interested in all and singular the premises hereinbefore assigned, or expressed and intended so to be, and of and in their appurtenances, for all the residue now to come and unexpired of the said term of —— years; and that all and every other the person or persons, in whom the messuage, lands, and other hereditaments, hereinbefore released, or expressed and intended so to be, or any of them, or any part thereof, are, is, can, shall, or may become vested for any term or terms of years, or chattel interest or interests whatsoever, shall stand and be possessed of and interested in the same premises respectively, for all the said term or terms of years, interest or interests respectively, upon the trusts following; that is to say, as to one moiety thereof, in trust for the said A. B., his heirs, appointees, and assigns, and to assign and dispose of the same as he or they shall from time to time direct or appoint, and in the mean time, Upon trust, to permit the residue and remainder of the said term of —— years, and of the said other term or terms, interest or interests respectively, to wait upon and attend the reversion, freehold, and inheritance of the said moiety of the premises therein respectively comprised, according to the uses hereinbefore declared of the same, so as to protect the same from all mesne incumbrances, if any such there be;

And as to the remaining other moiety of the same premises, in trust for the said E. F., his heirs, appointees, and assigns, and to assign and dispose of the same as he or they shall from time to time direct, limit, or appoint; and in the mean time, upon trust, to permit the residue and remainder of the said term of —— years, and of the said other term or terms, interest or interests respectively, to wait upon and attend the reversion, freehold, and inheritance of the said last-mentioned moiety of the premises, therein respectively comprised, according to the uses hereinbefore declared of the same, so as to protect the same from all mesne incumbrances, if any such there be.

Another form.

XL. And it is hereby declared and agreed, by and between the parties to these presents, and the said A. B. and C. D. do hereby severally direct and appoint that the said E. F. and G. H. respectively, and their respective executors, administrators, and assigns, shall severally and respectively stand and be possessed of the said messuages &c. hereby assigned to them respectively for the several residues of the said several terms therein respectively, Upon trust for the person or persons who for the time being shall be entitled to the freehold, reversion, and inheritance of the said premises, under the limitations hereinbefore contained, and in the parts, shares, and proportions, and for the times and estates in and for which they respectively shall be entitled to the same, and to be assigned and disposed of from time to time as they respectively shall direct or appoint; and in the mean time to attend, wait upon, and go along with the freehold, reversion, and inheritance of the same premises, according to the uses, trusts, and estates hereby limited thereof, and be subservient to the same uses, trusts, and estates; to the end that the same freehold, reversion, and inheritance may by means of the said terms be protected and defended from and against all incumbrances, if any, mesne, and subsequent to the creation of the same terms respectively, and upon no other trust, and for no other end, interest, or purpose whatsoever.

Trusts to attend upon an assignment of differ-

XLI. And it is hereby directed, declared, and agreed by and between all the parties to these presents, that the said

A. B. and C. D. respectively, and their respective executors, administrators, and assigns, shall stand and be possessed of the said several terms of —— years and —— years, in the lands and hereditaments hereby assured to them respectively, Upon trust for the said E. F. and G. H., their heirs, executors, administrators, and assigns respectively, according to the nature and quality of the estates hereby conveyed to them the said E. F. and G. H., their heirs, executors, administrators, and assigns, in the same lands and hereditaments respectively, and to be assigned and disposed of from time to time as they shall appoint, and in the mean time to attend, wait upon, and go along with the reversion or other estate in the same lands and hereditaments respectively, which is hereinbefore released, or assigned, or otherwise assured to tho said E. F. and G. H., their heirs, executors, administrators, and assigns respectively; to the intent that the same reversion or other estate may by means of the said terms respectively be protected and defended from and against all incumbrances, if any, mesne, and subsequent to the creation of the same terms respectively.

ent terms to different trustees.

XLII. Upon the trusts, and to and for the intents and purposes hereinafter expressed or declared of or concerning the same; that is to say, as to all such, and so many, and such part and parts of the said hereditaments as have not been sold or disposed of by the said A. B. as aforesaid, in trust for the said A. B., his heirs, appointees, and assigns, and to dispose of the same as he or they shall from time to time direct or appoint; And as to &c. [*similar trust as to part conveyed to C. D.*]; And as to all and singular the premises hereinbefore assigned, or intended so to be, subject to the trusts hereinbefore declared thereof respectively, Upon trust to permit the residue and remainder of the said term of —— years, and of the said other term or terms, or interest or interests respectively, to wait upon and attend the reversion, freehold, and inheritance of the premises therein respectively comprised, according to the uses declared thereof, and now subsisting therein respectively, as hereinbefore is mentioned and recited, so as to protect the same from all mesne charges and incumbrances, if any such there be.

Of a satisfied term for the several purchasers and sub-purchasers of the estates comprised therein, and to attend the reversion.

Of term assigned to attend upon mortgage, and, subject thereto, upon the reversion.

XLIII. And it is hereby agreed and declared between and by the parties to these presents, that he the said C. D., his executors, administrators, and assigns, shall stand and be possessed of and interested in all and singular the premises hereinbefore assigned, or expressed and intended so to be, and of and in their appurtenances, for all the residue now to come and unexpired of the said term of —— years; And that all and every other person or persons in whom the messuages and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, or any of them, or any part thereof, are, is, can, shall, or may become vested for any term or terms of years, or chattel interest or interests whatsoever, shall stand and be possessed of and interested in the same premises respectively, for all the said term or terms of years, interest or interests respectively, In trust for the said A. B., his executors, administrators, and assigns, and to assign and dispose of the same as he or they shall from time to time direct or appoint, for the better and more effectually securing to him the said A. B., his executors, administrators, and assigns, the repayment of the said sum of £——, on or at the days or times, and in manner as in the aforesaid proviso or agreement mentioned and appointed for payment of the same; and from and after payment of the said sum of £—— unto the said A. B., his executors, administrators, and assigns, and in the mean time subject thereto, Upon trust to permit the residue and remainder of the said term of —— years, and of the said other term or terms, interest or interests respectively, to wait upon and attend the reversion, freehold, and inheritance of the premises therein respectively comprised, so as to go along with and be subservient to the same, and to protect and defend the same from all mesne incumbrances, if any such there be.

Another form.

XLIV. In trust for the said A. B. [*mortgagee*], his executors, administrators, and assigns, for further and more effectually securing to him and them the payment of the said sum of £—— and the interest thereof, according to the true intent and meaning of these presents, or the said indenture of release bearing even date with these presents; and, subject to the payment thereof, In trust for the said

E. F. [*the mortgagor*], his heirs and assigns, to the intent that the said term of —— years of and in the premises hereby assigned by the said C. D., may attend &c., the reversion &c.

Of an attendant term as to part of lands for a mortgagee, for better securing his debt, and as to other part, and after payment of mortgage debt, then as to the whole for owners of inheritance.

XLV. Upon the trusts &c., (that is to say), as to the said messuages &c. comprised in the said term of five hundred years, appointed or demised to the said A. B. [*mortgagee*], his executors, administrators, and assigns, by way of mortgage as aforesaid, for securing the said principal sum of £—— and the interest thereof; In trust for the said A. B., his executors, administrators, and assigns, for better and more effectually securing to him and them the payment of the said sum of £——, and the interest thereof, and as to, for, and concerning all the residue of the said manors &c., comprised in the said several terms of five hundred years and five hundred years, and hereinbefore assigned or otherwise assured, or intended so to be, and every part or parcel of the same, with their and every of their rights, members, and appurtenances; and after payment of the said sum of £——, and the interest thereof, and in the mean time subject thereto, as to, for, and concerning the said farms, lands, &c., appointed or demised to the said A. B., his executors, administrators, and assigns, for the said term of five hundred years, by way of mortgage aforesaid, with their and every of their rights, members, and appurtenances; In trust for the said C. D., his heirs, appointees, and assigns, and to be assigned or disposed of from time to time as he or they shall direct or appoint; And in the meantime to attend &c.

Of attendant term, subject to a charge.

XLVI. In trust nevertheless, in the first place, for securing to the said A. B., his executors, administrators, and assigns, the payment of the said legacy or sum of £——, and the interest thereof, when and as the same respectively shall become due and payable, according to the directions, true intent and meaning, of the last will and testament of the said C. D., and the codicil thereto; and subject to the payment of the said sum of £—— and interest, In trust for the said E. F., his heirs and assigns, &c.

Of term to protect owner and lands from annuities, and secure payment of principal and interest; and, subject thereto, in trust for purchaser.

XLVII. In trust to protect the said A. B., his heirs, executors, administrators, and assigns, and also all other the lands, hereditaments, and premises of the said A. B., his heirs, executors, administrators, and assigns, other than and except the said messuages &c. so purchased by the said C. D. and E. F., and intended or agreed to be conveyed to or in trust for them, their heirs and assigns, as tenants in common as aforesaid, of and from the payment of the said annuities, and all the arrears thereof, or any of them; and afterwards, and in the next place, for securing to the said A. B., his executors, administrators, and assigns, the payment of the said sum of £—— and the interest thereof, and subject thereto, then in trust for the said G. H. and I. K. respectively, and their respective heirs and assigns, as tenants in common, and to be assigned and disposed of from time to time as they shall direct or appoint, for the purpose, and only for the purpose, of protecting the said messuages &c. so purchased or agreed to be purchased as aforesaid by the said C. D. and E. F., and intended and agreed to be conveyed to them, their heirs and assigns, as tenants in common as aforesaid, of, from, and against all mesne charges and incumbrances, if any such there be, and upon no other trust, nor for any other end, intent, or purpose whatsoever.

Of attendant term on the purchase of copyhold lands, a term being created out of the copyhold tenement.

XLVIII. In trust nevertheless for the said A. B., his heirs and assigns, to attend, wait upon, and go along with the reversion and inheritance of the copyhold tenure of the said hereditaments, in the mean time and until the copyhold tenure of the same hereditaments shall be extinguished; and after the copyhold tenure of the same hereditaments shall be extinguished, then in trust for the person or persons to whom the freehold tenure of and in the same hereditaments shall be conveyed in trust for or for the benefit of the said A. B., his heirs and assigns, according to the estates and interests which shall be limited thereof; to the intent that the reversion and inheritance of the copyhold tenure of the same hereditaments, in the mean time, till that tenure shall be extinguished, and afterwards the freehold tenure of the same hereditaments as far as the said A. B., his heirs or

assigns, shall be interested therein, shall, by means of the said term of 1000 years, be protected and defended from all incumbrances against which the said term of 1000 years can afford a protection.

XLIX. Upon trust nevertheless for the said A. B., his heirs and assigns, and to protect the copyhold tenure of the said messuages, &c., from all incumbrances in the mean time and until the same shall be enfranchised, and afterwards and thenceforth In trust for the said A. B., his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct and appoint, and in the mean time to wait upon and go along with the freehold tenure of the same messuages &c., to the end to protect and preserve the title of the said A. B., his heirs and assigns, from all incumbrances whatsoever. Another form.

L. And it is hereby agreed and declared, between and by the said parties to these presents, that all and every the person and persons, (if any), in whom the rectory, advowson, tithes, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part or parts thereof respectively, now are or is or hereafter shall or may become vested for any term or terms of years whatsoever, or who now have or hath, or hereafter shall or may have any charge or lien thereupon, either at law or in equity, shall from henceforth stand and be possessed of and interested in the said terms for years, charges, and liens respectively, In trust to permit the same respectively to wait upon and attend the reversion, freehold, and inheritance of the same hereditaments and premises, according to the several uses, trusts, intents and purposes, powers, provisoes, agreements, and declarations hereinbefore expressed or declared and contained, so as to be subservient to the same respectively, and to protect the same against mesne incumbrances, if any such there be, and to assign and dispose of the same terms for years, charges, and liens accordingly. General declaration of trusts of terms to attend the inheritance.

LI. And the said A. B. doth hereby direct and de- Declaration that underlease shall

attend the reversion, and that lands released shall be the primary fund for the payment of the rent.

clare, that the residue of the term which he hath by way of underlease in the said messuage, lands, and hereditaments hereby released or otherwise assured, or intended so to be, with the appurtenances, shall henceforth be held in trust for him, his heirs and assigns, and to attend the freehold, reversion, and inheritance of the same messuages, lands, and hereditaments, as the same freehold, reversion, and inheritance are hereby released or otherwise assured, or intended so to be; But the rent payable under or by virtue of the said underlease shall, while continuing, be answered and paid out of the said messuage, lands, and hereditaments hereby released or otherwise assured, or intended so to be, as the primary fund for the payment of the same rent, in exoneration of the personal estate of the said A. B.

Declaration that all persons possessed of outstanding terms, shall stand possessed on trust for securing an annuity and sum of money, and, subject thereto, upon trust for the trustee of the term granted, for securing the annuity, &c.

LII. And it is hereby declared &c., and the said A. B. [*grantor*] doth hereby direct, limit, and appoint, and for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said C. D., [*trustee of the term for securing the annuity*], his executors, administrators, and assigns, that all and every person and persons, who now is and are, and at any time, and from time to time hereafter, during the continuance of the said annuity hereby granted, or intended so to be, or afterwards and during the continuance of the said sum of £——, or any part thereof, on this present security, shall or may be possessed of, interested in, or entitled to any term or terms for years, or other estates, liens, charges, or incumbrances, in or out of or in anywise affecting the said messuages &c., hereby charged or made chargeable with the said annuity, yearly rent, or annual sum of £——, and also granted or demised, or intended so to be, or any part or parcel of the same, with their appurtenances, shall stand and be possessed of, interested in, and entitled to the same term and terms for years, estates, liens, charges, and incumbrances respectively; In trust for the said G. H. and her assigns, during the continuance of the said annuity, yearly rent, or annual sum of £——, for the more effectual securing the same annuity, yearly rent, or annual sum; and, subject to the said last-mentioned annuity, yearly rent, or annual sum, In trust for the

said C. D., his executors, administrators, and assigns, during the continuance of the said term of 500 years, hereby granted or demised or otherwise assured, or intended so to be, upon the trusts hereinbefore expressed and declared of and concerning the same term, and (subject to the same trusts) to be assigned and disposed of, from time to time, as the said C. D., his executors, administrators, or assigns, with the consent of the said E. F., his executors, administrators, or assigns, shall direct or appoint, and in the mean time, and during the continuance of the said annuity, yearly rent, or sum of £——, and also of the said term of 500 years, hereby granted, or intended so to be, to be held in trust, to the intent to protect and defend the said annuity, yearly rent, or sum of £——, and also the reversion and inheritance of the said hereditaments and premises, during the continuance of the said term of 500 years, from and against all incumbrances, if any, mesne, and subsequent to the creation of the same terms for years, estates, liens, charges, and other incumbrances respectively.

To attend the inheritance on the assignment of a bond.

LIII. In trust nevertheless for and for the only benefit of the said A. B., his heirs and assigns, and to be assigned and disposed of from time to time, in such manner, and to be used for such purposes, as he or they shall direct or appoint, To the intent that the estate and interest of the said A. B., his heirs and assigns, of and in the said lands and hereditaments, may, by means of the said bond, or one or more judgment or judgments, execution or executions upon the same, be protected and defended against any incumbrances whatsoever, as far as the same hereditaments and premises can be protected and defended by means of the said bond, or any proceedings under the same.

Of a dissenting meeting-house.

LIV. Upon trust (*a*), that the said trustees, and the sur-

(*a*) If money is to be raised by mortgage for paying off subsisting incumbrances, the following form may be used:—

"Upon trust that they the said trustees, or the survivors or survivor of them, or their and his assigns, or the heirs of

Meeting-house to be built and used for public worship by Calvinists.

vivor of them, their and his assigns, and the heirs of such survivor, do and shall permit and suffer a meeting-house to be built on the said piece or parcel of land, and at all times hereafter to be used, occupied, and enjoyed as a place of public religious worship for the service of God by the Society of Protestant Dissenters, at &c. aforesaid, of the denomination of Calvinists, adhering to the doctrine set forth in the shorter catechism, commonly known by the name of "The Assembly's, or Westminster Catechism;" and also, by such other persons as shall hereafter be united to the society, or attend the worship of God in such meeting-house, to be built at the expense of such members of the said society and such other persons as shall think fit to subscribe to the same, and according to such plan as the said society or the said trustee or trustees for the time being shall adopt for that purpose.

Residue of land to be used as a burial-ground.

And also do and shall permit and suffer so much of the said piece or parcel of land as shall not be occupied by the said meeting-house to be at all times used with and appendant to the said meeting-house as a burial ground.

Nominees of a general meeting to receive the voluntary subscriptions raised towards the support of public worship.

And do and shall permit such person or persons as shall be nominated by the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned, to receive and take all such voluntary subscriptions and other sums of money as shall from time to time be paid or subscribed by any person or persons whomsoever towards the support of the public worship of God in the said meeting-house, for defraying the expenses and charges attending the same, or as shall be contributed for the benefit or support of the minister for the time being officiating therein.

Minister properly qualified and elected at a ge-

And do and shall permit such person adhering to the doctrines of Christianity set forth in the catechism here-

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such survivor, do and shall, as soon as conveniently may be, after the execution of these presents, by mortgage, either with or without power of sale, of all or any part of the said trust premises, raise such sum or sums of money as shall be sufficient to pay off and discharge the said principal sum of £——, together with all interest, if any, which shall be due thereon, and do and shall pay and discharge the same accordingly; And, subject thereto, do and shall &c."

inbefore mentioned to preach and expound the Scriptures for the said meeting-house, as shall from time to time be elected and chosen by the whole or the majority of the male and female persons present and qualified to vote at any such general meeting as hereinafter is mentioned: Provided also, nevertheless, that if at any time the conduct or behaviour of any minister to be elected as aforesaid, by the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned, be deemed immoral, or if at any time such minister shall attempt to introduce any other order of church government or doctrine, contrary to that set forth in the catechism hereinbefore mentioned, then and in such case it shall be lawful for the said trustee or trustees for the time being to displace such minister; and in all cases the power of electing a new minister, and in all cases (except those which are here specified) the power of removing or displacing the minister for the time being, shall be in the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned: Provided always, and it is hereby agreed and declared, that the said trustee or trustees for the time being shall not at any time permit or allow any minister to preach in the said meeting-house any other doctrine than such as is agreeable to the catechism hereinbefore mentioned. And upon this further trust, that the said trustee or trustees for the time being do and shall, at any time or times, at the request of the whole or of the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned, raise such sum or sums of money as shall be directed by the whole or the majority of such male persons, by a mortgage of all or any part of the said trust premises, and make any conveyance for that purpose; and also, at the request of the whole or of the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned, do and shall absolutely make sale of the said trust premises, or any part thereof, either by public auction or private contract, and in such manner as the whole or the majority of such male persons shall think fit, and convey the same trust premises when sold to the person or persons who shall agree to

neral meeting, to preach in meeting-house.

Minister removable, and under what circumstances.

No minister to preach any other doctrine than what is agreeable to the Westminster Catechism.

To mortgage trust premises as directed by general meeting.

To sell.

To exchange.

become the purchaser or purchasers thereof; and also, at any time or times, at such request as aforesaid, do and shall convey the said trust premises, or any part thereof, to any person or persons in exchange for or in lieu of any other hereditaments, to be situate within —— miles of —— aforesaid, as to the said trustee or trustees for the time being, with the consent of the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned, shall appear more convenient for the purposes aforesaid, or any of them.

To stand seised of the hereditaments taken in exchange, upon the trusts declared of the land hereby appointed.

And the said trustees or trustee for the time being shall stand and be seised of the hereditaments (if any) which shall be taken in exchange as aforesaid, upon and for such and the same trusts, and to and for such and the same ends, intents, and purposes, as are in and by these presents expressed and declared concerning the said piece or parcel of land hereby limited and appointed, or intended so to be, or as near thereto as may be, and the nature of the hereditaments to be taken in exchange, and the purposes of convenience for which they shall be taken in exchange, will admit of; And the said trustees or trustee for the time being shall stand possessed of the money which from time to time shall be received on any sale or mortgage or exchange which shall be made under the trust hereinbefore declared, Upon trust to invest, lay out, or dispose of the same, in such manner and for such purposes, for the benefit of the said society, and for the improvement of the trust property, or the enlargement, repair, or rebuilding of the trust premises, or any of them, or otherwise, as the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned shall direct. And upon this further trust, that in case the said society shall be totally dissolved or dispersed, and the public worship of God in the said meeting-house discontinued for the space of two years together, then the said trustee or trustees for the time being do and shall convey and assure the premises for the time being, subject to the trusts of these presents, unto such person or persons, in such manner, and for such purposes, either religious or civil, as two-thirds in number of those male persons who

And be possessed of the money arising from any sale, mortgage, or exchange, upon trust to invest and dispose thereof for certain purposes, as general meeting shall direct.

In case the society shall be dissolved for two years, to convey trust premises as two-thirds of former subscribers shall direct.

at the time of such dissolution or dispersion shall be, and for the space of one year then immediately preceding shall have been, subscribers to the said meeting-house, and members of the said society, and communicants therein, shall appoint by any writing under their hand. And it is hereby declared, that any receipt which shall be given by the said trustee or trustees for the time being for anything which shall be paid on any such purchase, mortgage, or exchange as aforesaid, shall effectually discharge the person or persons paying the same from being answerable or accountable for the mis-application or non-application, or from being obliged or concerned to see to the appropriation of the money in such receipt acknowledged or expressed to be received; And that every sale, mortgage, and exchange which shall be made, and every contract for sale which shall be entered into, and every conveyance which shall be executed by the said trustee or trustees for the time being, pursuant to the trusts hereinbefore declared, shall be binding and conclusive on all persons claiming any benefit or interest under or by virtue of these presents: Provided always, and it is hereby further declared and agreed, that when any of the trustees hereby appointed, or to be appointed as hereinbefore is mentioned, shall change his or their religious sentiments for such as are incompatible with or contrary to the doctrines set forth in the catechism hereinbefore mentioned, or shall actually reside for more than twelve calendar months at a distance of —— miles or upwards from the said meeting-house, then, and so often as the same shall happen, the trustee or trustees who shall so change his or their religious sentiments as aforesaid, or shall actually reside for more than twelve calendar months at such distance as aforesaid, shall thenceforth cease to be a trustee or trustees of these presents, and shall to all intents and purposes, so far as relates to these presents, be considered as dead: Provided also, and it is hereby further declared, that when and so often as from any of the causes aforesaid, or from death, or disability or disinclination to act, there shall be only five acting trustees of the said trust premises, the vacancy in the number of trustees shall be supplied by the appointment

Trustees' receipts to be sufficient discharges.

Office of trustee to determine on a change of religious sentiments or non-residence.

Appointment of new trustees.

To exchange.

become the purchaser or purchasers thereof; and also, at any time or times, at such request as aforesaid, do and shall convey the said trust premises, or any part thereof, to any person or persons in exchange for or in lieu of any other hereditaments, to be situate within —— miles of —— aforesaid, as to the said trustee or trustees for the time being, with the consent of the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned, shall appear more convenient for the purposes aforesaid, or any of them.

To stand seised of the hereditaments taken in exchange, upon the trusts declared of the land hereby appointed.

And the said trustees or trustee for the time being shall stand and be seised of the hereditaments (if any) which shall be taken in exchange as aforesaid, upon and for such and the same trusts, and to and for such and the same ends, intents, and purposes, as are in and by these presents expressed and declared concerning the said piece or parcel of land hereby limited and appointed, or intended so to be, or as near thereto as may be, and the nature of the hereditaments to be taken in exchange, and the purposes of convenience for which they shall be taken in exchange, will admit of; And the said trustees or trustee for the time being shall stand possessed of the money which from time to time shall be received on any sale or mortgage or exchange which shall be made under the trust hereinbefore declared, Upon trust to invest, lay out, or dispose of the same, in such manner and for such purposes, for the benefit of the said society, and for the improvement of the trust property, or the enlargement, repair, or rebuilding of the trust premises, or any of them, or otherwise, as the whole or the majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned shall direct. And upon this further trust, that in case the said society shall be totally dissolved or dispersed, and the public worship of God in the said meeting-house discontinued for the space of two years together, then the said trustee or trustees for the time being do and shall convey and assure the premises for the time being, subject to the trusts of these presents, unto such person or persons, in such manner, and for such purposes, either religious or civil, as two-thirds in number of those male persons who

And be possessed of the money arising from any sale, mortgage, or exchange, upon trust to invest and dispose thereof for certain purposes, as general meeting shall direct.

In case the society shall be dissolved for two years, to convey trust premises as two-thirds of former subscribers shall direct.

at the time of such dissolution or dispersion shall be, and for the space of one year then immediately preceding shall have been, subscribers to the said meeting-house, and members of the said society, and communicants therein, shall appoint by any writing under their hand. And it is hereby declared, that any receipt which shall be given by the said trustee or trustees for the time being for anything which shall be paid on any such purchase, mortgage, or exchange as aforesaid, shall effectually discharge the person or persons paying the same from being answerable or accountable for the mis-application or non-application, or from being obliged or concerned to see to the appropriation of the money in such receipt acknowledged or expressed to be received; And that every sale, mortgage, and exchange which shall be made, and every contract for sale which shall be entered into, and every conveyance which shall be executed by the said trustee or trustees for the time being, pursuant to the trusts hereinbefore declared, shall be binding and conclusive on all persons claiming any benefit or interest under or by virtue of these presents: Provided always, and it is hereby further declared and agreed, that when any of the trustees hereby appointed, or to be appointed as hereinbefore is mentioned, shall change his or their religious sentiments for such as are incompatible with or contrary to the doctrines set forth in the catechism hereinbefore mentioned, or shall actually reside for more than twelve calendar months at a distance of —— miles or upwards from the said meeting-house, then, and so often as the same shall happen, the trustee or trustees who shall so change his or their religious sentiments as aforesaid, or shall actually reside for more than twelve calendar months at such distance as aforesaid, shall thenceforth cease to be a trustee or trustees of these presents, and shall to all intents and purposes, so far as relates to these presents, be considered as dead: Provided also, and it is hereby further declared, that when and so often as from any of the causes aforesaid, or from death, or disability or disinclination to act, there shall be only five acting trustees of the said trust premises, the vacancy in the number of trustees shall be supplied by the appointment

Trustees' receipts to be sufficient discharges.

Office of trustee to determine on a change of religious sentiments or non-residence.

Appointment of new trustees.

of as many additional persons as will make up the number of the trustees, such appointment to be made by the whole majority of the male persons present and qualified to vote at any such general meeting as hereinafter is mentioned; and that all such conveyances shall be made and executed, at the expense of the trust premises or the funds of the society, as shall be necessary or deemed advisable for vesting the said trust premises; And that the new trustees who shall be so from time to time appointed, shall have all the powers and authorities of the trustees in whose place they shall be substituted: Provided nevertheless, that only those persons shall be eligible for the office of trustee who at the time of supplying any such vacancy for the time being as aforesaid shall be, and for twelve months then immediately preceding shall have been made, subscribers to the said meeting-house, and members of the said society, and communicants therein, or who, previously to the time of supplying such vacancy as aforesaid, shall have subscribed their names at the foot of a copy of the catechism hereinbefore mentioned, in testimony of their faith and adherence to the said doctrines of Christianity set forth in the said catechism: Provided always, and it is hereby further declared, that the trustees hereby appointed or to be appointed as aforesaid, shall not be answerable or accountable, the one for the others or other of them, or for any involuntary loss, or for the signing of receipts for the sake of conformity; and that it shall be lawful for them to deduct and retain all costs, charges, and expenses of and attending the execution of the said trusts reposed or to be reposed in them respectively, under or by virtue of these presents: Provided always, and it is hereby lastly declared, that for any of the purposes aforesaid hereinbefore mentioned, a general meeting of those persons who shall for the time being be subscribers to the said meeting-house, and members of the said society, and communicants therein, shall be held when and so often as occasion shall require; and of every such general meeting notice shall be given at the said meeting-house, during the time of divine service on the Sunday morning preceding the day of the meeting, and that no general meeting shall be held earlier than the Wednesday

Persons eligible to the office of trustee.

Trustees not to be answerable for involuntary loss or formal receipts, and to retain expenses of trust.

General meeting of subscribers, members, and communicants, to be held as occasion shall require.

Notice of general meeting.

morning succeeding the Sunday on which such notice shall have been given as aforesaid; and that only those persons shall be entitled to vote at any such general meeting, on any of the matters aforesaid, who shall then be, and for twelve calendar months then immediately preceding shall have been, subscribers to the said meeting-house, and members of the said society, and communicants therein, and who, previously to the day of such general meeting, shall have subscribed their names at the foot of a copy of the catechism hereinbefore mentioned, in testimony of their faith in and adherence to the doctrines of Christianity set forth in the said catechism; and that the said trustees present and qualified to vote at any such general meeting, shall be at liberty to vote upon all questions agitated at the meeting.

Qualification of voters.

Trustees when qualified to vote.

LV. Upon trust, that the trustee or trustees for the time being, shall from time to time, and at all times hereafter, permit (*a*) the said meeting-house and premises to be used,

Another form.

Meeting-house to be used for public worship.

(*a*) The following Forms are frequently required:—

"Permit a meeting-house or other offices to be built on the said piece of ground, and to be used, occupied, and enjoyed as and for a place of public religious worship &c., such meeting-house and other erections to be built at the expense of such members of the said society of Protestant Dissenters, and such other persons as shall think fit to subscribe for the same, and according to such plan as the said society, or the trustees thereof, shall adopt for that purpose."

"Permit and suffer the said piece of ground to be from time to time and at all times hereafter used as a burial place for the interment of deceased members of the said society of Protestant Dissenters and others, according to the regulations to be prescribed by the majority of the then members for the time being of the society, attending the said meeting-house, being subscribers thereto and communicants therein, and being present at a church meeting to be convened for that purpose."

If the premises are intended to be used as an academy, then say:—

"Permit and suffer the said messuage or tenement and

occupied, and enjoyed as a place of public religious worship for the service of God by the society of Protestant Dissenters of the denomination called ——, and also by such other persons as shall hereafter be united to the said society, and attend the worship of God in the said meeting-house; And also at all times for ever hereafter permit the said room called the vestry room to be used with and be appendant to the said meeting-house as a vestry room, and the said piece of ground called the burial ground to be used with and be appendant to the said meeting-house as a burial ground, and the said messuage to be used and be inhabited by the officiating minister for the time being, for his residence, or otherwise to be let, as the major part of the male subscribers to the said meeting, being members thereof and communicants therein, shall, at a meeting duly held for that purpose, declare; And permit such person or persons as shall be nominated by the male subscribers for the time being to the said meeting-house, or the major part of them, being members of the said society and communicants therein, at any meeting for that purpose duly assembled, to receive and take all such voluntary subscriptions and other sums of money as shall from time to time be paid or subscribed by any person or persons whomsoever, towards the support of the public worship of God in the said meeting-house, and for defraying the expenses and charges attending the same, or as shall be contributed for the benefit and support of the minister for the time being officiating therein; And permit to officiate in the said meeting-house

Vestry-room and burial-ground to be appendant to meeting-house.

Messuage to be occupied by minister or let.

Nominees of a general meeting to receive voluntary subscriptions.

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hereditaments hereby bargained and sold, to be used, occupied, and enjoyed as and for an academy or school, or place of classical or religious instruction for young men devoted to the ministry among Protestant Dissenters, or otherwise, in such manner, and under such regulations, and with full power to alter and vary such regulations, as the major part of the trustees for the time being, together with the major part of the members subscribing for the time being to such academy, who shall have been subscribers thereto for twelve preceding calendar months, shall at any public meeting to be convened for such purpose, and held after a week's previous notice thereof, from time to time order and direct."

such person or persons of the denomination of Protestant Dissenters called ——, as the said subscribers, or the major part of them, men or women, being members of the said society, and communicants therein, at a meeting duly assembled for that purpose, shall from time to time elect to officiate as their minister or pastor in the said meeting-house, according to the usual orders and customs of societies of Protestant Dissenters of the denomination aforesaid. And upon this further trust, that the said trustee or trustees for the time being shall, at any time or times, when thereunto requested by the major part in number of the male subscribers for the time being, members of the said society and communicants therein, and who shall be attending at a meeting duly assembled for that purpose, raise such sum or sums of money as shall be directed by the male subscribers present at such meeting, or the major part of them, by a mortgage of all or any part of the said trust estate, and make any conveyance for that purpose; And also, when thereunto requested by the major part in number of such male subscribers, being members and communicants as aforesaid, attending at a meeting duly assembled for that purpose, absolutely make sale of the said trust estate, or any part thereof, and the fee simple and inheritance thereof, either by public auction or private contract, and in such manner as such male subscribers, being members and communicants as aforesaid, or the major part of them for the time being, attending such meeting, shall think fit; and convey the same trust estates, when sold, to the person or persons who shall agree to become the purchaser or purchasers thereof; And also at any time or times, at such request as aforesaid, convey the said trust estates, or any part thereof, to any person or persons in exchange for or in lieu of any other hereditaments, to be situate within —— miles of —— aforesaid, as to the trustee or trustees for the time being, with the consent of such male subscribers, being members and communicants as aforesaid, or the major part of them present at any meeting convened for that purpose, shall appear more convenient for the purposes aforesaid, or any of them; And upon this further trust that the said trustee or trustees for the time being shall stand and be seised of the hereditaments (if any) which shall be taken

To mortgage trust premises.

To sell.

To exchange.

To stand seised of hereditaments taken in exchange upon the trusts declared

of the hereditaments hereby bargained and sold.

in exchange as aforesaid, upon the same or the like trusts, and to and for the same or the like ends, intents, and purposes as are hereinbefore expressed and declared concerning the same hereditaments hereby bargained and sold, or as near thereto as may be, and the nature of the hereditaments to be so taken in exchange, and the purposes of convenience for which they shall be taken in exchange, will admit. And upon this further trust, that the said trustee or trustees for the time being shall stand possessed of the money which from time to time shall be received on any sale or mortgage or exchange which shall be made under the trusts hereinafter declared, Upon trust to invest, lay out, or dispose of the same in such manner and for such purposes, for the benefit of the said Society of Protestant Dissenters of the denomination aforesaid, or for the improvement of the trust property, or the enlargement, repair, or rebuilding of the trust premises, or any of them, or otherwise as the major part in number of the male subscribers, being members of the said society, and communicants therein as aforesaid, present at a meeting to be called for that purpose, shall direct. And upon this further trust, that in case the said society shall be totally dissolved or dispersed, and the public worship of God in the said meeting-house discontinued for the space of two years together, then the said trustee or trustees for the time being shall convey and assure the said trust estates hereby bargained and sold, and also the hereditaments to be received in exchange as aforesaid, unto such person or persons, in such manner, and for such purposes, either religious or civil, as two-thirds in number of those male members of the said Society of Protestant Dissenters who at the time of such dissolution or dispersion shall be, and for one year then next preceding shall have been, subscribers to the support of the public worship of God in the said meeting-house, and during the like period shall have been members of the said congregation, and communicants therein, shall appoint by any writing under their hands. And the said A. B. [*donor*] doth direct, and the other parties do hereby agree, that the person or persons who shall become the purchaser or purchasers, or take a mortgage or mortgages of all or any part of the said trust estates, his, her, or their heirs, executors, or administrators, shall not be obliged to see to the

And be possessed of the money arising from any sale, mortgage, or exchange, upon trust to invest and dispose thereof as general meeting shall direct.

In case the society shall be dissolved, to convey trust premises as two-thirds of former subscribers shall direct.

Trustees' receipts to be sufficient discharges.

application of the money to be advanced or paid by him, her, or them respectively, as the consideration of such purchase or purchases, mortgage or mortgages, nor be answerable or accountable for the misapplication or non-application of the same money, or any part thereof, after the same shall have been paid to or to the order of the said trustee or trustees for the time being under these presents; And that every receipt which shall be given by the said trustee or trustees for the time being for such purchase or mortgage money, or any part thereof, shall be a good, valid, and sufficient acquittance and discharge for the sum or sums of money which therein or thereby respectively shall be acknowledged or expressed to be or to have been received; And that every sale and mortgage which shall be made, and contract for sale which shall be entered into, and conveyance which shall be executed by the said trustee or trustees for the time being, pursuant to the trusts hereinbefore declared, shall be binding and conclusive on all persons claiming any benefit or interest under the trusts hereinbefore contained: Provided further, and it is hereby directed, that when and so often as or at any time after there shall be only five acting trustees of the said trust estate, the vacancy in the number of trustees shall be supplied by the appointment of so many additional persons, being Protestant Dissenters by profession, as will make up the number of thirteen trustees, such appointment to be made by the major part of the male subscribers to the said meeting-house, being members and communicants as aforesaid, who shall be present at a meeting convened for that purpose, and with the consent and approbation of the surviving and acting trustees or trustee; And that all such conveyances shall be made and executed (at the expense of the said trust estate, or the funds of the congregation attending the said meeting-house) as shall be necessary or deemed advisable for vesting the said trust estates in the then acting trustee or trustees, jointly with such additional trustees; And that of every meeting for the purposes aforesaid there shall be public notice given on the Sunday preceding, during the time of divine service; And that the meeting shall not be held earlier than the Wednesday succeeding such Sunday; And that no person shall be entitled

Vacancy in the number of trustees to be supplied by new pointments at a general meeting.

General meeting, notice of.

Qualification of voters.

to vote on any of the matters aforesaid unless such person shall have been a subscriber to and a member of the said society, and communicant therein, twelve calendar months prior to such meeting; And that the trustee or trustees for the time being shall be entitled to deduct and retain all the costs, charges, and expenses of and attending the execution of the trusts reposed or to be reposed in him or them under or by virtue of these presents.

Another form.

Meeting-house to be used for Divine worship by Independents.

LVI. Upon trust, that they the said several persons, party hereto of the third part, and the survivors and survivor of them, and the heirs and assigns of such survivor, do and shall (*a*) permit and suffer the said chapel or meeting-house

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(*a*) If money is to be raised by mortgage for erecting chapel, insert the following:—

"As soon as conveniently may be, by way of mortgage or further charge of the said plot of land &c. hereby assured, or intended so to be, either to themselves, the said trustees or trustee for the time being, or to any of them, or to any other person or persons whomsoever, levy and raise, and take up at interest, at one time or at several times, any sum or sums of money, not exceeding £—— of lawful British money, and for that purpose do and shall make, enter into, and execute all such acts and contracts, deeds, and assurances as may be proper for effecting such mortgage or mortgages, or purchases, and do and shall pay and apply such sum of £——, or any less sum, when so raised as aforesaid, and the sum already raised, or which shall be raised by voluntary subscription, in erecting, completing, and finishing the said chapel or meeting-house, and the vestry, school-rooms, offices, and buildings which are intended to be erected, used, and employed, with the chapel, &c.; And also in payment and discharge of any debt or debts which may be owing upon the said premises, or upon the bonds, notes, or other securities of the said trustee or trustees for the time being, or any of them, for or in respect of the said trust estate, or in accomplishing any of these purposes; and, subject to such mortgage or mortgages, do and shall &c."

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to be henceforth used as a place for Divine worship according to the tenets and practice of Protestant Dissenters who profess the principles of the Independent denomination, as hereinafter expressed and declared; and do and shall, from time to time, permit and suffer the officers or persons usually denominated deacons, for the time being, of any society of persons who shall or may hereafter assemble and worship at the said chapel or meeting-house, pursuant to the tenets hereinafter expressed and declared, and form themselves into a Christian church or society according to the principles and discipline, and in the manner usually adopted by the said religious society of persons called as aforesaid, (such deacons being always chosen by the majority of persons who shall communicate with such church as members as aforesaid, in the manner usually adopted by persons holding the principles of the aforesaid denomination), to let the pews and seats of the said chapel or meeting-house to such persons and upon such terms and conditions as the said deacons shall think proper, under the control of such church or society. But if there shall be no church or society so formed, and usually assembling and worshipping at the said chapel or meeting-house, or if such church shall happen to be dissolved, or there shall be no such deacons as aforesaid, then In trust, that they the said trustees or trustee for the time being do and shall, from time to time, let the same pews and seats in the said chapel or meeting-house, in the same manner as hereinbefore directed with respect to the said deacons letting the same, but

Deacons to let pews.

If society be dissolved, and there be no deacons, trustees to let pews.

The following recital should be premised:—

"And whereas the said several persons, parties to these presents, of the second part, are intending to erect and build upon the said plot of land, with monies which have been voluntarily given and placed in their hands by divers persons for that purpose, and with the further sum of money to be raised by mortgage of the said hereditaments, in pursuance of the authority hereinafter contained, a chapel or meeting-house for the public worship and service of Almighty God, by a society of persons dissenting from the Church of England, usually called Independents, as hereinafter mentioned."

at such rents and under such conditions as the said trustees or trustee for the time being shall think proper. And upon this further trust, that the said trustees or trustee for the time being do and shall permit the said deacons for the time being to receive the rents of the pews or seats in the said chapel or meeting-house, and all other annual profits arising from the said trust premises, or if there shall be no such deacons, then that the trustees or trustee for the time being do and shall receive the same, so as such rents, issues, and profits be at all times hereafter paid, applied, and disposed of by them in manner following; (that is to say), In the first place, in or towards payment of the said principal sum of £——, and all arrears which shall or may become due and payable in respect thereof, and in payment and discharge of the annual premium or premiums for the sums of money which shall, from time to time, become payable in respect of any insurance or insurances of the said premises from fire which may be effected under the direction of any meeting or meetings of the said church or society, or the major part of them, to be held as hereinafter mentioned; And in the next place, in or towards the payment of the salary of the minister or ministers for the time being of the said chapel or meeting-house, or in obtaining supplies, and in or towards the repairs of the said chapel or meeting-house, buildings, or hereditaments hereby settled or intended so to be, or any of them, and for such other purpose for the better establishment of the said chapel or meeting-house as shall, from time to time, be determined upon by the male members of the said church or society, or the major part of them, assembling and worshipping therein as aforesaid, at any meeting or meetings to be called and held as hereinafter mentioned: Provided always, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful for the said trustees and trustee for the time being, at any time or times hereafter, in case it shall be determined upon and directed at any meeting or meetings of the said church or society, to be called or held in manner hereinafter mentioned, (subject to the restrictions hereinafter mentioned), to sell and absolutely dispose of the said chapel or meeting-house, buildings, hereditaments, and premises hereby bar-

Deacons to receive rents; if no deacons, then the trustees.

Rents to be applied in payment of principal sum and premiums of insurance;

of minister's salary;

and of repairs of chapel, &c.

To sell chapel, &c.,

gained and sold, or intended so to be, and the appurtenances, to any person or persons, for a reasonable price or prices of money, or for reasonable annual chief or other rents, and either by public auction or private contract, as shall be thought proper; and for that purpose, to make, enter into, and execute any agreements, contracts, and conveyances which may be necessary for selling and disposing of the same: Provided always, and it is hereby agreed and declared between and by the parties to these presents, that no sale of the said trust premises, or any of them, shall be made under the trusts aforesaid, unless a majority of the male members for the time being of the said church or society assembling as aforesaid, and also a majority of the said trustees for the time being, the whole number of the said trustees then living not being fewer than ten, or in case there shall happen to be no such church or society, then, unless a majority of the said trustees for the time being, the whole number of trustees not being fewer than twenty-one, shall deem the said chapel or meeting-house to be improper or inconvenient to be used as a place of religious worship, or unless the laws now in force respecting the toleration of Dissenters be repealed, or so far altered as in any respect to alter, limit, or restrain the society in the exercise of religious worship in the said chapel or meeting-house, according to the mode they choose to adopt, or unless there shall at any time for the uninterrupted space of two years cease to be any religious congregation of the denomination aforesaid at the said chapel or meeting-house, or unless the said church or society and congregation assembling as aforesaid, or either of them, for six calendar months after notice shall have been publicly given in the said chapel or meeting-house, upon two successive Sabbaths, of any sum or sums of money owing on account of the said trust estate, or any part thereof, which the said trustees, or any of them, or their respective heirs, executors, or administrators, or any of them, shall have been called upon or obliged to make good or pay, shall refuse or neglect to raise and pay such deficiencies or arrears, or otherwise well and sufficiently indemnify the said trustees for the time being, and every of them, of and from the payment thereof. And it is hereby

under certain restrictions.

Proceeds of sale to be applied in the purchase, erection, or improvement of any other chapel, &c.

agreed and declared, between and by the parties to these presents, that in case the said chapel or meeting-house and other hereditaments and premises shall be sold and disposed of under the trusts aforesaid, the monies or annual rent or rents arising therefrom shall be applied in or towards the purchase, erection, or improvement of any other chapel or meeting-house, for the purpose hereinbefore mentioned, to be situate within the parish of —— aforesaid, and in or towards the purchase, erection, or improvement of any dwelling-house or other buildings for the use thereof, or as connected therewith, or in or towards the accomplishment of all or any of these objects, or in or towards the establishment or support of any other religious or charitable institution or institutions, within the said parish, or upon such other trusts, and in such other manner, so as the same be for the encouragement of Divine worship by persons of the denomination of Independents, and holding the doctrines hereinafter mentioned, and for the education of poor persons in Christian knowledge connected with the said denomination, as shall be determined upon and thought proper at any meeting or meetings of the said church or society, to be called and held in manner hereinafter mentioned. And it is hereby further agreed and declared between and by the parties to these presents, that the nomination and appointment, removal and displacing of the minister of the said chapel or meeting-house and other trust premises, and all things relating thereto whereof the control and management are not hereinbefore provided for, shall be under the control and management of the said church or society assembling and worshipping as aforesaid, or the major part of the members thereof. And it is hereby further agreed and declared, between and by the said parties, that the said chapel or meeting-house and premises are by these presents granted, bargained, sold, and conveyed as aforesaid, to the intent and purpose that the same may at all times hereafter (subject to the several provisions and agreements herein contained) be appropriated to the public worship and service of Almighty God by the said society of Protestant Dissenters called as aforesaid, wherein shall be taught

Appointment and removal of trustees, &c. to be under the control of the society.

Declaration of the principles of the Independent denomination, for whose use the chapel is appropriated.

and included the doctrines and principles generally maintained by Protestant Dissenters of the said Independent denomination called Pædo-baptist Independents, and wherein shall be taught and inculcated such doctrines and principles as are hereinafter mentioned and expressed; (that is to say), Three equal persons in the Godhead—eternal and personal election—original sin—particular redemption—free justification by the imputed righteousness of Christ—efficacious grace in regeneration—the final perseverance of the saints—the resurrection of the dead—the eternal happiness of the righteous,—and the everlasting misery of such as die impenitent; And it is intended that no persons holding any tenets or practising any ceremonies different from those already described shall have any right or title to the provisions of this deed (*a*). And for the

(*a*) The following clause of exclusion is sometimes inserted,—
"And it is hereby more particularly designed to exclude the following sects and denominations; namely, Antipædo-baptists, or those who maintain that infants are not proper subjects of Christian baptism, or that baptism cannot be administered by pouring or sprinkling; also those who deny the moral law of God to be a rule of life to believers; also Arminians, who maintain that every man has power in himself to turn to God, and the doctrine of general redemption, and deny the doctrines of eternal and personal election, and the final perseverance of the saints; also Arians, who deny the proper deity of Christ; and Socinians, who hold that Jesus Christ was merely a man, and that his death was not an atonement and a sacrifice for sins; also Sandemanians, who hold the opinions with respect to faith which were broached in Scotland by Messrs. Sandeman and Glass, namely, that saving faith consists in a mere assent to the Gospel report, with their views of evangelical government and discipline; and also all those who do not bonâ fide maintain the sentiments which distinguish those religious communities, which are usually denominated Pædo-baptist Independents, whether mentioned or not in this deed."

The reader who is curious to know more of these religious sects, may consult Adam's "Religious World," or Dr. Evans's "Denominations of the Christian World."

plain understanding of the Christian discipline and government of the said church or society, the following principles and sentiments are hereby recognised and admitted to be the foundation on which the said church or society has been or is intended to be formed; (that is to say), That the New Testament contains a sufficient and the only authoritative rule for the constitution and direction of Christian churches; whence it follows, *firstly*, That Christ's authority and laws alone can bind the consciences of Christian people, and can constitute the conditions of Christian fellowship and communion; *secondly*, As Christian churches are purely voluntary associations, it is indispensable that the admission or exclusion of members be by the act or with the consent of the church; *thirdly*, As the objects which Christian societies are designed to promote are spiritual, all services of revenue and affairs of finance are to be separated, both avowedly and in effect, from the conditions or continuance of Christian fellowship, duty, and privilege; *fourthly*, As the nature of the authority to which Christian churches are subject, is moral, being opposed to all admission of secular power, there ought not to subsist any connexion or dependence, except a moral one, between the member (as such) of any Christian society and the officer or officers thereof; *fifthly*, The unalienable right is vested in every such society to choose its spiritual pastors and teachers; and in order to prevent all questions and disputes amongst brethren, it is agreed and declared by and between all the said parties, that organs, and all other instruments of music whatever, shall be excluded from the said chapel or meeting-house in the worship or service of Almighty God, so long as the minister, or any one of the members of the said church or society for the time being, male or female, shall declare his or her conscientious objection to the same.

Qualification of voters.

And it is further agreed and declared, that the male members of the said church or society for the time being shall alone vote in all matters of a temporal nature which are hereby referred to them, to the exclusion of the female members, but that this clause shall not be construed to relate to the choice of ministers or deacons, or to matters of discipline, or of a spiritual nature: Provided al-

ways, and it is hereby further agreed and declared between and by the parties to these presents, that whenever the said church or society, or the major part of the male members thereof, or any number amounting to or exceeding one-third part of such members, (having been in communication with the said church or society for the space of six calendar months), shall think it expedient or necessary, a meeting of the said church or society, to be held in the said chapel or meeting-house, shall be called by public notice at the said chapel or meeting-house after Divine service, and before dismissal of the congregation, twice on each of the two successive Sabbaths at the least previous to such meeting taking place; and such notice shall express the purpose or purposes for which such meeting shall be called. And it is hereby further agreed, that all questions agitated at any of the said meetings, upon which all the persons present, having been communicants for six calendar months, shall not happen to agree, shall be decided by a majority of the votes of the persons present having votes, the chairman of such meeting having an equal vote with the rest; and that if upon any question being agitated at any of the said meetings, the votes of the persons present having votes shall happen to be equal, then and in every such case, the chairman of such meeting shall be at liberty to give a second or casting vote; and the decision made as aforesaid upon any question agitated at any of the said meetings shall be binding and conclusive on all persons anywise interested in the said chapel or meeting-house, whether present at or absent from such meeting: And all acts, deeds, matters, and things, done, executed, and transacted by such deacon as aforesaid for the time being, or in case there shall be no church, then by the major part of the said trustees for the time being, or by the direction in writing in pursuance of any resolution passed at any of the said meetings, shall be as valid and effectual, to all intents and purposes whatsoever, as if the same were made, done, executed, or transacted by all the trustees for the time being (*a*).

General meeting, how to be called.

Questions, how to be decided.

(*a*) The usual clauses for making trustees' receipts sufficient discharges, appointing and indemnifying trustees, with covenants for title, if necessary, should be added.

Declaration of trust in creditors' deed.

LVII. And it is hereby agreed and declared by and between all the said parties to these presents, that the said leasehold pieces or parcels of ground, messuages, and premises, and the said debts or sums of money so due and owing as aforesaid to the said A. B., respectively hereinbefore assigned or intended so to be, are respectively so assigned unto the said C. D. and E. F., Upon the trusts hereinafter mentioned; (that is to say), As to the said debts or sums of money hereinbefore assigned by the said S. H., Upon trust that they the said C. D. and E. F., or the survivor of them, his executors, administrators, or assigns, do and shall forthwith collect, get in, and receive the same several debts or sums of money, and do and shall (after deducting or satisfying the costs occasioned by or in the receipt or recovery of such debts) apply and dispose of the monies so to be received in or towards the same or the like ends, intents, and purposes as are hereinafter expressed or declared of the monies to arise from the sale of the said leasehold premises, under the trust in such behalf next hereinafter declared or contained; And as to the said leasehold premises hereinbefore assigned, Upon trust that they the said C. D. and E. F., or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall of their or his own proper authority, without any further consent or concurrence of the said A. B., his executors or administrators, and as soon as conveniently can be after the execution of these presents, make sale and absolutely dispose of the said several leasehold messuages or tenements, ground, buildings, and premises hereby assigned or intended so to be, and every part of the same, with their appurtenances, either together and in one lot or by parcels and in several lots, and either by public auction or by private contract, and to buy in and re-sell the same in like manner, without being responsible for any diminution in price on any such re-sale, as they the said trustees or trustee shall think proper, and for the best price or prices in money which at the time of such sale or sales can or may be reasonably had or gotten for the same; and do and shall assign and assure the same premises when sold unto the purchaser or purchasers thereof, his, her, or their executors, administrators, and assigns, or

As to the debts owing to assignor, upon trust to collect the same, and after satisfying costs of collecting, to dispose of residue towards the purposes expressed of the proceeds of the sale of leaseholds.

As to the leaseholds, upon trusts for sale.

as he, she, or they shall direct; And do and shall stand and be possessed of the monies to arise or be produced from such sale or sales as aforesaid, and the rents and profits of the said leasehold premises in the mean time, and also of the monies to be collected or received in respect of the debts aforesaid, hereinbefore assigned by the said A. B., upon the trusts following; (that is to say), Upon trust, that they the said C. D. and E. F., or the survivor of them, his executors, administrators, or assigns, do and shall, by, with, and out of such monies, rents, and profits respectively as aforesaid, satisfy and pay the costs, charges, and expenses of or attending the preparing or engrossing and obtaining the execution of these presents, and the costs, charges, and expenses of or attending the making and completing such sale or sales as aforesaid, and also all costs and expenses which they the said trustees or trustee shall in cur, expend, or be put to in the observance of the covenants and agreements in the said hereinbefore recited leases contained, and the money which they or he shall disburse for or on account of the reserved rents or ground rents, or the arrears thereof, or the taxes or repairs of the said leasehold premises, or the insurance of the same against loss by fire, or in or about any suit or suits for obtaining possession of the said premises, or enforcing the performance of any contract or contracts for sale thereof, or otherwise, in or about the execution and performance of the trusts of these presents; And upon further trust, that they the said C. D. and E. F., or the survivor of them, his executors, administrators, or assigns, do and shall apply and dispose of the then residue or surplus of the monies to arise or be produced, collected, and received respectively as aforesaid in payment to themselves, and the said several persons, parties hereto of the third part respectively, or to their respective executors, administrators, or assigns, of the several debts or sums of money so now due and owing to them respectively from the said A. B. as aforesaid, set opposite to their respective names in the said first schedule to these presents, or so much of the same debts respectively as such residue or surplus aforesaid of the trust monies shall or will extend to pay, and by an equal

Produce of sale to be applied, first, in payment of expenses; and secondly, of debts pari passu. Surplus to be paid to assignor.

pound rate, according to the amount of the same several debts or sums of money, and without any preference or priority of payment of any one or more of the said creditors to the others or other of them; And in case there shall be any surplus of the monies aforesaid, after answering and satisfying the purposes aforesaid, then do and shall pay the same unto the said A. B., his executors, administrators, or assigns.

To sell and pay produce in discharge of costs, &c., and subject thereto rateably amongst scheduled creditors, until they have received 10*s.* in the pound—residue to debtor. (In creditor deeds).

LVIII. Upon trust, that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, as soon as conveniently may be after the execution of these presents, by such method and in such manner as they or he shall judge most expedient, sell and dispose of all and singular the said leasehold messuages, tenements, and premises hereinbefore assigned, or expressed and intended so to be, with their and every of their appurtenances, for such price or prices in money as can be reasonably had or gotten for the same; And do and shall pay and apply the money to arise by such sale, and the rents, issues, and proceeds of the said messuages and premises, in the mean time, upon the trusts, and to and for the ends, intents, and purposes, herein mentioned and declared of and concerning the same; (that is to say), Upon trust, in the first place, to retain and reimburse themselves and himself all costs, charges, and expenses which shall have been incurred or sustained in the preparing and engrossing of these presents, and in the execution of the several trusts herein contained, or in anywise relating thereto; and after payment thereof, upon trust to pay and apply such parts thereof as shall be necessary in discharge of all rent and taxes which are now due and owing for or in respect of the said messuages or tenements and premises; and in the next place, to pay off and discharge the existing incumbrances thereon, according to the respective priorities thereof; and, subject thereto, to pay and apply the rest and residue of the said monies, or such parts thereof as shall be necessary, towards the payment of the several debts owing by him the said E. F. to the said parties hereto of the second part, or their respective executors, administrators, or assigns, rateably and

in proportion to the amount of the debts owing to them respectively, without any priority or preference, until each of the said creditors, or his or her executors, administrators, or assigns, shall have received 10*s.* in the pound on the amount of his or her respective debts (*a*); And as to, for, and concerning all such surplus money as shall remain after payment of the said costs, charges, rent and taxes, incumbrances, and debts, Upon trust, that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall pay and transfer the same to the said E. F., his executors, administrators, and assigns, or to such person or persons as he or they in that behalf shall direct.

To pay incumbrances out of lands charged with the same, to divide residue of produce among scheduled creditors not being mortgagees, and if not sufficient, then rateably according to amount of respective debts.

LIX. Upon trust that they the said A. B., C. D., and E. F., and the survivors and survivor of them, his heirs, executors, administrators, and assigns, do and shall, by, with, and out of the money which shall arise or be produced by or from the sale of the lands and hereditaments comprised in each of the mortgages respectively which are mentioned or specified in the schedule hereunder written or hereunto annexed, pay, satisfy, and discharge the sum and sums of money due upon each of the said mortgages respectively, and the interest due and to become due for the same sums respectively, and which shall then remain unpaid; And upon this further trust, that they the said A. B., C. D., and E. F., and the survivors and survivor of them, his heirs, executors, administrators, and assigns, by, with, and out of the residue,

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(*a*) Or,—

"And by and out of the residue or surplus of the said sum of £——, and the interest thereof, do and shall pay to the said several creditors of the said E. F., who are parties to these presents of the second part respectively, or to their respective executors, administrators, or assigns, ten shillings in the pound on the amount of the debts hereinbefore mentioned to be owing to them respectively, and without any priority whatsoever, and without any preference of any one or more of them to any other or others of them."

if any, of the money to arise or be produced by or from the sale of the lands and hereditaments comprised in each of the said mortgages respectively; and also by, with, and out of the residue, if any, of all other money which shall arise or be produced by or from such sale or sales as aforesaid, do and shall pay, satisfy, and discharge unto the several other creditors of the said G. H., whose names are mentioned in the schedule hereunder written or hereunto annexed, or unto their respective executors, administrators, and assigns, the several sums of money set against the names of the same creditors respectively, and the interest due and to become due for such of the said sums respectively as carry interest, and interest at the rate of £5 per cent. per annum, from the day of the date of these presents, for such of the said sums respectively as do not carry interest; And in case such residue of the said money shall not be sufficient for the purpose, then, do and shall pay and divide the said last-mentioned residue unto and among the said creditors, (not being mortgagees), and their respective executors, administrators, and assigns, rateably in proportion to the sums of money owing to the same creditors respectively, without any priority or preference whatsoever of any one or more of the said creditors, his, her, or their executors, administrators, or assigns, over any other or others of the same creditors, his, her, or their executors, administrators, and assigns, as aforesaid (*a*).

To pay incumbrances affecting lands and secured by

LX. And in the next place, do and shall, out of the money arising from the said sale, and also from the rents of the lands, hereditaments, and moiety respectively, discharge

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(*a*) When creditors are to be preferred in the order in which they shall exhibit their securities,—

"And so as such last-mentioned sum or sums shall be payable in the order and course in which the securities for the same respectively shall be exhibited as aforesaid, without any regard to the priority of the dates or execution of the same securities respectively."

the incumbrances affecting the same lands, hereditaments, and moiety respectively, and in particular the principal monies and interest secured by the said pledges or deposits, as far as the same incumbrances, pledges, and deposits affect the same lands, hereditaments, and premises respectively; And afterwards and in the next place, do and shall apply the whole or a competent part of the money arising from such sales as aforesaid, and the rents of the premises, and the money, if any, to become due under and by virtue of such insurance, if any, in reimbursing to the said A. B., his heirs, executors, administrators, and assigns, such and so many of the debts and sums of money specified in the schedule thereof, hereunder written or hereunto annexed, as in the mean time shall have been paid, satisfied, and discharged by him or them, together with interest, at the rate of £5 per cent. per annum, on such of the said debts and sums of money as shall have been paid or discharged by the said A. B., his heirs, executors, administrators, or assigns, computing such interest from the respective times at which the same debts and sums of money shall have been paid, satisfied, and discharged by him or them respectively; together also with the costs, charges, and expenses (if any) which shall have been incurred or sustained by the said A. B., his heirs, executors, administrators, and assigns, by reason or on account of any suits at law and in equity, brought, sued, commenced, or prosecuted, or to be brought, sued, commenced, or prosecuted for recovering and enforcing the payment of the same debts or sums of money respectively, and afterwards in payment, satisfaction, and discharge of so much and such part of the principal monies and interest of the debts specified in the schedule hereunder written or hereunto annexed, as shall then remain unpaid, in such order, and with such priority and preference as the said A. B., his heirs, executors, administrators, or assigns, shall direct or appoint; And in default of such direction and appointment, then and in that case do and shall pay, distribute, and divide the money arising from such sales and such rents among the creditors whose debts shall remain unpaid, their executors, administrators, or assigns, by an equal pound rate in proportion to the debts which shall then be owing to the same

pledges. 2nd. To replace debts to be paid by one of the partners named, with interest and all costs, &c. 3rd. To pay the residue to the other creditors as the partners shall appoint, or in default, pari passu. (In a deed to indemnify one person against the debts owing by himself and another upon a partnership account).

creditors respectively, until the same creditors respectively, their executors, administrators, or assigns, shall have received twenty shillings in the pound on the sums then owing to the same creditors respectively, until the whole of the money arising from such sale, and also the said rents, shall be applied, as far as the same will extend.

To apply the residue of a sum in composition of debts, &c.

LXI. Do and shall pay and apply all or any part of the residue or surplus of the said sum of £——, and the interest thereof, in payment, satisfaction, and discharge, or in the composition of all or any of the debts due and owing, and at any time and from time to time hereafter to be due, owing, or contracted by or from the said A. B., to or with any person or persons whomsoever, and in such manner, and upon such terms, and in such proportions, and with such priority and preference of any one or more of the same creditors, his, her, or their executors or administrators, to or over any other or others of the same creditors, his, her, or their executors or administrators, and upon such evidence of the existence of any such debt or debts as the said C. D., his executors or administrators, at any time or times before or after the said sum of £——, and the interest thereof, shall be received by him or them, shall think most beneficial for the said A. B., his executors or administrators.

Of a sum not exceeding a certain amount if personal estate insufficient, and pay same in discharge of debts, &c. so as to put creditors on an equal footing.

LXII. Do and shall retain and take any sum or sums of money, not exceeding £——, and apply the same in satisfaction and discharge of so many of the debts of the said A. B. as the clear produce of his personal estate shall be insufficient to pay; and do and shall apply the sum or sums of money to be retained as aforesaid, so as to put all the creditors of the said A. B., as nearly as may be, on an equality, and so that persons exhausting all or any parts of the personal estate may be postponed till other creditors shall be made equal with them, according to the course and practice of courts of equity in marshalling assets.

In trust for and to convey as cestui que trust shall appoint, and to the in-

LXIII. In trust for the said A. B., his heirs and assigns, and to convey and dispose of the same from time to time, as he or they shall direct or appoint, and to the intent that the

trust or beneficial ownership may be deemed and considered as vested in him and his heirs in fee simple, from the date of the said recited articles, notwithstanding his death before the execution of these presents by the said C. D. and E. F.

tent that the beneficial ownership may be considered as vested in him.

LXIV. And it is hereby agreed and declared, between and by the parties to these presents, that the said A. B. and his heirs shall stand and be seised of the hereditaments and premises hereinbefore appointed and released, or intended so to be, upon trust, that he or they shall forthwith convey the said messuages &c., and all and singular other the hereditaments comprised in the said indenture of settlement, unto the said C. D. and E. F., and their heirs, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, to, for, upon, with, under, and subject to which the said messuages, lands, tenements, and all and singular other the premises hereby appointed, would now, under and by virtue of the hereinbefore in part recited indenture of settlement, stand and be limited, subject and liable, in case this present indenture had not been made and executed, and the name of the said C. D. had in the hereinbefore in part recited indenture been inserted instead of the name of the said G. H.

To convey to the uses of settlement, where a new trustee is appointed.

LXV. To such uses, upon such trusts, and for such ends, intents, and purposes, and with, under, and subject to such powers, provisoes, declarations, and agreements, as the messuages or tenements, lands, hereditaments, and premises, hereby released or otherwise assured, or intended so to be, would at the time of the execution of these presents have stood limited, settled, or assured, under or by virtue or means of the hereinbefore in part recited indenture of lease, and indenture of release or settlement, in case the name of the said A. B. had been originally inserted in the said hereinbefore in part recited indenture of lease, and indenture of release or settlement, instead of the name of the said C. D., and the several estates, powers, and authorities, thereby limited or given to the said C. D. and E. F., or their heirs, executors, administrators, or assigns, or to them and the sur-

Another form.

vivor of them, his heirs, executors, administrators, or assigns, had been limited and given to the said A. B. and E. F., their heirs, executors, administrators, or assigns, or to them or the survivor of them, his heirs, executors, administrators, or assigns, or as near thereto as may be, and the deaths of parties, the change of interest, and the substitution of the said A. B. as a trustee in the place or stead of the said C. D., and other intervening circumstances, will admit, and upon no other trust, nor for any other end, intent, or purpose whatsoever.

By reference of freehold estate, term of years, and personal estate in a conveyance, by an old to a new trustee.

LXVI. And it is hereby further declared and agreed by and between the parties to these presents, as far as they respectively are interested, that the said manors, messuages, lands, tenements, and hereditaments hereby released or otherwise assured to and for the use of the said A. B., his heirs and assigns, and the said hereditaments &c., comprised in the said term of five hundred years, during the residue of the said term of five hundred years, and the said household goods, plate, linen, china, books, implements of household furniture, and personal estate, hereby assigned to the said A. B., his executors, administrators, and assigns, shall be held by him and them upon the same trusts, and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisoes, declarations, and agreements, as the same trust estates and trust property are or were respectively held by the said C. D., at the time of his execution of these presents, or as near thereto as may be, and the substitution of the said A. B. as a trustee in the place or stead of the said C. D., and other circumstances, will admit.

To assign certain personal estate to executors of will, upon the trusts thereof.

LXVII. And it is hereby directed, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, that the said hereby, or hereby intended to be assigned or otherwise assured parts or shares of and in the said leasehold messuages, lands, and tenements, and the terms of years therein respectively, and also of and in the said goods, chattels, funded property, debts, and personal estate, are respectively assured to the

said A. B., his executors, administrators, and assigns; Upon trust that he, his executors or administrators, do and shall forthwith assign the same respectively unto the said C. D. and E. F., their executors, administrators, and assigns, to be held by them, as the executors of the will of the said G. H., and as part of his personal estate, to be applied in a due course of administration, or otherwise according to the trusts and directions of the same will; and upon no other trust, nor for any other end, intent, or purpose whatsoever.

To convey to uses of will.

LXVIII. And it is hereby agreed and declared, by and between the said parties to these presents, as far as they respectively are interested, that the said A. B., C. D., and E. F., their heirs and assigns, shall stand seised of and be interested in the said messuages &c. hereby released or otherwise assured, or intended so to be, and every part or parcel of the same, with their and every of their rights, members, and appurtenances, Upon trust to convey and assure the same to such uses, upon such trusts, and to and for such ends, intents, and purposes, and under and subject to such powers, provisoes, and limitations, as ought to be limited, expressed, and declared of the same, according to the trusts and directions contained in the said will of the said G. H., and upon no other trust, nor for any other end, intent, and purpose whatsoever.

To assign personalty to such one or more as shall, at the decease of a particular person, be his heir or co-heirs.

LXIX. Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall pay, transfer, and assign the said sum of £—— unto the person or persons who at the decease of the said E. F. shall be his heir or co-heirs at law, as and for his, her, or their own absolute property; And if there shall be co-heirs, then do and shall divide the same between them, as tenants in common and not as joint tenants, and in the same shares and proportions (either equally or unequally) as they would be entitled to a real estate descending from the said E. F., and vesting in them at her death by descent as her co-heirs.

Of hereditaments, &c. by reference to those declared by will; and agreement, to convey immediately after decease of vendor, (if not previously done), in the event of having no after-born children living at his decease. Further agreement to vest shares of other persons in trustees, in trust to indemnify purchaser against proportions of such after-born children (if any), and, in the interim, to permit owners to receive rents.

LXX. In trust to convey, settle, and assure the said messuages, &c. hereby released or otherwise assured, or intended so to be, Upon the trusts declared thereof by the said recited will of the said A. B., except so far as the same trusts are altered or varied by these presents; and in the mean time, and until such conveyance shall be made and executed, do and shall permit and suffer the said messuages, &c. to be held and enjoyed, and the rents and profits thereof to be received and taken by the person or persons who for the time being shall be entitled thereto under or by virtue of the trusts contained in the same will, except so far as the same trusts are altered or varied by these presents; And in case the said C. D. shall depart this life without having any other child born to him, or all such children as shall hereafter be born to him shall die in his lifetime, then do and shall make such conveyance immediately after his death, unless the same shall have been made in the mean time. And it is further directed, declared, and agreed by and between the said E. F., G. H., &c., for themselves respectively, and for their respective heirs, executors, administrators, and assigns, that the several and respective shares to which the said E. F., G. H., &c. respectively, and their respective heirs, are or shall or may be entitled, of and in the messuages &c., and of and in their rights, members, and appurtenances, shall from time to time be retained by or vested in the said A. A. and B. B., their heirs and assigns, and held by them in trust, that in case any other child or children shall hereafter be born to the said C.D., and any one or more of the same, subsequently born, shall be living at the death of the said C. D., then the said A. A. and B. B., their heirs and assigns, or the survivor of them, his heirs or assigns, do and shall from time to time, by and out of the shares of the said E. F., G. H., &c. respectively, of and in the said messuages &c. hereby released or otherwise assured, or intended so to be, and either by the rents and profits thereof, or a mortgage or sale of the same shares, or a competent part thereof, reimburse and pay to the said C. C., his heirs, appointees, and assigns, being the owner or owners for the time being of the said messuage and hereditaments purchased by him as aforesaid, and his, her, and

their executors, administrators, and assigns, all such costs, losses, charges, damages, and expenses as he and they shall from time to time severally and respectively incur, bear, suffer, sustain, lay out, and disburse, by reason or on account of or in respect of such subsequent born child or children, his, her, or their heirs or assigns, claiming any part or share, parts or shares of and in the messuages and hereditaments purchased by the said C. C. as aforesaid, or any of them, or any rents and profits, possession or enjoyment of any part or share, parts or shares of the said messuages and hereditaments, or any of them; And, subject to the trusts hereinbefore contained, do and shall permit and suffer the shares of the said E. F., G. H., &c. respectively, and their respective heirs and assigns, of and in the said messuages &c. hereby released or otherwise assured, or intended so to be, to be held and enjoyed by the person or persons respectively who for the time being shall be entitled to the same messuages, &c.; And, subject and without prejudice to any sale or mortgage to be made as aforesaid, do and shall convey and assure the same messuages &c. respectively, when and as soon as the said messuages and other hereditaments purchased by the said C. C. as aforesaid shall by any means become well and effectually discharged of and from the estates and interests of any child or children, if any, of the said C. D., who shall hereafter be born, and who shall be living at his death. And it is hereby further agreed, that it shall or may be lawful to and for the said C. C., his heirs or assigns, at any time, if he or they shall think fit, to abandon and give up to such subsequent born child or children of the said C. D. who shall be living at his death, or to his, her, or their heirs or assigns, his, her, or their proportional share or shares of the said messuage and hereditaments purchased by the said C. C. as aforesaid, and to require to be raised, reimbursed, and paid, (and accordingly there shall be raised, reimbursed, and paid to him or them, under the trusts hereinbefore contained) the then value to be sold of the aliquot part of such child or children respectively, or of his, her, or their heirs or as signs, of and in the said messuage and hereditaments so purchased by the said C. C.; And in that case, after such value shall have been raised, reimbursed, and paid to the said C. C., his heirs or

assigns, and all other costs, charges, damages, and expenses, if any, to which he or they shall then be entitled, shall have been reimbursed and paid to him or them, (and subject and without prejudice to any such sale or mortgage as aforesaid), all the messuages &c. hereby released or otherwise assured, or intended so to be, shall be discharged of and from the trusts hereinbefore declared thereof, for the benefit of the said C. C., his heirs, appointees, executors, administrators, and assigns, and shall be conveyed and assured according to the directions hereinbefore contained in that behalf.

To lay out money in the purchase of lands, to sell same, and to lease till sale.

LXXI. And upon this further trust, that if thereunto requested by the said E. F. and G. H., or the survivor of them, by any writing under his, her, or their hand or hands, they the said A. B. and C. D., or the survivor of them, his executors or administrators, do and shall, from time to time, lay out and invest all or any part of the same sum of £——, or the produce of the stocks, funds, and securities in or upon which the same shall be invested from time to time, or of the lands which shall be purchased as hereinafter mentioned, in the purchase of lands or tenements in England, or the principality of Wales, held either in fee simple, or for any long and absolute term of years, of which one hundred years at least shall at the time of such purchase remain unexpired; and do and shall, upon such request as aforesaid, or after the death of the survivor of the said E. F. and G. H., and in his or their discretion, and of his or their own authority, convert such lands and tenements into money by a sale thereof, and stand and be possessed of the money arising from such sale upon the same or the like trusts as are hereby declared of the money which shall be invested in the purchase of the lands and tenements to be purchased from time to time; and do and shall, from time to time till such sale, make such leases of the lands and tenements, at full improved rents, for any term or number of years not exceeding twenty-one years, as the said E. F. and G. H., or the survivor of them, shall require; and after the death of the survivor of the said E. F. and G. H., as the said A. B. and C. D., or the survivor of them, or the executors or administrators of the survivor of them,

shall think fit; And also in the meantime, till such sale, do and shall apply the rents and income of the said lands and tenements to be so purchased, in the same manner, and for the benefit of the same persons, and in the same proportions, as the interest of the money to be invested in such purchases of the said lands and tenements respectively would have been applicable in case such purchases had not been made; And in all other respects do and shall stand and be seised of or interested in the lands and tenements to be purchased from time to time as aforesaid, upon or subject to the same trusts as if the said lands and hereditaments were personal estate; and so and in such manner, that on a sale of the same lands and tenements, or any of them, the person or persons who shall have become the purchaser or purchasers of the same shall not be under any obligation to see to the application of the purchase-money, or be answerable or accountable for the misapplication or non-application of the same.

To invest money secured on bond, and stand possessed thereof, upon the trusts of the within-written indenture.

LXXII. And further, that the said A. B. shall stand and be possessed of and interested in the within-mentioned bond of the said E. F., and of the principal sum of £——, thereby secured, and now vested in him by survivorship; Upon trust that when the said principal sum of £—— shall be called in and paid into the hands of the said A. B., his executors, administrators, and assigns, he or they shall and will lay out and invest the same, at interest, with the consent and approbation of the said G. H., and I. his wife, or of the survivor of them, if living; and if dead, then with the consent of the said C. D., or such other trustee or trustees as shall be appointed in his place in case of his death, in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England, in the names of them the said A. B. and C. D., or of such other person or persons as shall be the trustee or trustees for the purposes aforesaid, upon such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations as by the within-written indenture are expressed or de-

clared of and concerning the said sum of £——, and the interest thereof.

When money is in the hands of trustees, and is intended to be invested on mortgage.

LXXIII. And it is hereby agreed and declared between and by the parties to these presents, that the said A. B. and C. D., their executors, administrators, and assigns, shall stand and be possessed of and interested in the sum of £——, now in the hands of the said A. B. and C. D., as hereinbefore is mentioned, and the security on which the same is intended to be invested as aforesaid, and the interest thereof, Upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, upon, for, with, under, and subject to which the same sum, security, and interest are or ought to be held under or by virtue of the said within-written indenture. (Vide Art. II.).

Declaration that estates are conveyed, upon trust to settle the same to the uses undetermined in recited Act of Parliament.

LXXIV. And it is hereby agreed and declared between and by the parties to these presents, that the messuages and other hereditaments hereby limited, appointed, disposed of, conveyed, granted, bargained, sold, aliened, released, and confirmed unto and to the use of the said A. B. and C. D., their heirs and assigns, as hereinbefore is mentioned, are so limited, appointed, disposed of, conveyed, granted, bargained, sold, aliened, released, and confirmed unto and to the use of the said A. B. and C. D., their heirs and assigns, Upon this special trust and confidence, that they the said A. B. and C. D. do and shall, immediately upon or after the sealing and delivery of these presents, release and assure or convey the same to such and so many of the uses, trusts, intents and purposes, provisoes, limitations, and restrictions, by the said hereinbefore in part recited act of the —— year of his Majesty King ——, limited or declared of or concerning the castle of A., and the other estates thereby entailed, as are now subsisting undetermined and capable of taking effect.

To renew leases and borrow money for the pur-

LXXV. Do and shall, from time to time, when and as be or they shall think fit, and it shall be in his or their power,

obtain a renewal or renewals of the term or terms in the said leasehold premises, and for that purpose do and shall, from time to time, borrow and take up at interest, on the mortgage or security of the said leasehold premises respectively, such sum and sums of money as shall be sufficient to discharge the fines, fees, and expenses of and attending such renewal or renewals, and making such mortgage or mortgages as aforesaid; and do and shall apply the money to be taken up at interest as aforesaid accordingly; And do and shall from time to time receive the rents and annual income of the said leasehold premises, and in the first place, and from time to time, do and shall pay and discharge the sum and sums of money which shall be taken up at interest as aforesaid (*a*); and afterwards and subject to the payment thereof (*b*) do and shall &c.

pose, &c.—the interest to be paid out of the rents.

LXXVI. In trust from time to time to renew the leases thereof respectively, when and as any of the persons on whose deaths the leases made or granted thereof, or to be made or granted thereof, are or shall be determinable, shall depart this life, provided such renewals can be obtained upon such terms as, in the opinion of the trustee or trustees for the time being, shall be reasonable; and if any such renewal shall be made in the lifetime of the said A. B., do and shall insert the name of the said A. B. in such renewed lease as one of the lives, and do and shall, for the purpose of making such renewal or renewals, surrender, or join or concur in surrendering the then subsisting lease of the premises of which such renewal is to be obtained; And for the purpose of raising and paying the fines, fees, and expenses of such renewal, and interest for the same, do and shall make one or more mortgage or mortgages of the premises of which renewal shall be obtained, and do and shall keep down the

To renew leases on such terms as trustees shall think reasonable, and for that purpose to surrender the subsisting lease, make mortgages, for the purpose of raising fines, &c., and pay the interest and rent out of income and profits.

(*a*) Or:—

"And reduce the principal at the rate of one-seventh part in each year from each renewal respectively."

(*b*) Or:—

"Payment of such interest and reduction of the principal."

interest of such mortgage or mortgages, and pay the rent of the said leasehold premises out of the rents, income, and profits of the same leasehold premises respectively; And, subject to the trusts hereinbefore declared, do and shall stand and be possessed of the said leasehold messuages, lands, tenements, and premises, for the several residues of the several terms for which the same are hereby granted, and also for the several terms which shall be obtained on any such renewal or renewals; In trust, &c.

Trusts to invest a yearly sum and receive the interest, and invest same and vary the securities (*short form*) as an accumulating fund, and stand possessed thereof upon trust to renew leases, pay fines, surrender, &c., and to appropriate a similar fund for every subsequent renewal, with covenant to answer deficiency, and power to trustees in a certain event by mortgage, or out of rents, to raise money for renewal, &c.

LXXVII. And it is hereby declared and agreed by and between all the said parties to these presents, that they the said A. B., C. D., and E. F., and the survivor of them, his executors, administrators, or assigns, do and shall, during the continuance of the trusts hereinbefore declared, lay out and invest the said annual sum of £——, when and as they or he shall receive the same, in their or his names or name, in the purchase of parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England, and from time to time alter, vary, and transpose the said stocks, funds, and securities, as they or he shall think reasonable, and receive the interest, dividends, and annual produce thereof, and lay out and invest the same in their or his names or name, in the purchase of or upon stocks, funds, and securities of the like nature, and alter, vary, and transpose the same as they or he shall think reasonable; To the intent and so that the said annual sum, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, and the resulting income and proceeds thereof respectively, may, during the continuance of the trusts hereby created of or concerning the said leasehold premises, accumulate in the nature of compound interest; And upon this further trust, that the said A. B., C. D., and E. F., their executors and administrators, shall stand and be possessed of and interested in the said annual sum, stocks, funds, securities, interest, dividends, annual produce, and the resulting income and proceeds thereof, and the accumulations thereof respectively, Upon trust that the said A. B., C. D., and E. F., and the survivors and survivor of them, and the executors, administrators, and assigns of such sur-

vivor, do and shall, by, with, and out of the same, at such time or times, in such manner and upon such terms as they or he shall think reasonable, renew the subsisting lease for the time being of the said leasehold premises in their or his names or name, and pay the fines, fees, and other expenses incident to such renewal or renewals, so that the said leasehold premises may, during the continuance of the trusts hereby created of and concerning the same, as far as the nature of the circumstances will admit, be held by the said A. B., C. D., and E. F., their executors, administrators, and assigns, for a term of fourteen years at the least. And it is hereby further agreed by and between the parties to these presents, that, for the purpose of obtaining such renewal or renewals, it shall and may be lawful to and for the said A. B., C. D., and E. F., and the survivor and survivors of them, and the executors, administrators, and assigns of such survivor, from time to time, to surrender or join or concur in surrendering the subsisting lease for the time being of the said leasehold premises, and all the estate, right, title, and interest of them the said A. B., C. D., and E. F., and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, of, in, and to the same. And it is hereby further agreed and declared between and by the parties aforesaid, that, from and after each such renewal as aforesaid, the said A. B., C. D., and E. F., their executors, administrators, and assigns, shall stand and be possessed of and interested in such part or parts of the said annual sum of £——, and the stocks, funds, and securities whereupon the same shall be laid out and invested, and the interest, dividends, and annual produce thereof, and the resulting income and proceeds thereof respectively, and the accumulations thereof (if any) as shall then remain after or not be applied upon or for answering the trusts and purposes aforesaid, In trust for the said G. H., his executors, administrators, and assigns; and after every such renewal, the said trustees or trustee shall begin again to set apart and lay out the said annual sum of £——, and the interest thereof, in manner aforesaid, in order to create a fund for the subsequent renewal of the said leasehold premises. And the said G. H.* doth for himself, his heirs, execu-

tors, and administrators, covenant, promise, and agree with and to the said A. B., C. D., and E. F., their executors, administrators, and assigns, that if when the usual course of renewal shall make it proper or expedient to renew the subsisting lease of the said leasehold premises, or when the said A. B., C. D., and E. F., or the survivors or survivor of them, or the executors, administrators, and assigns of such survivor, shall deem it necessary to have the same renewed, and shall by writing under their or his hands or hand require the same to be renewed, the fund hereinbefore provided, or intended to be provided for defraying the charges and expenses of the said renewal, shall not be sufficient to answer the same, then and in such case, and so often as the same shall happen, he the said G. H., his heirs, executors, or administrators, shall and will from time to time during his life, with his own proper money, make good the deficiency; Provided always nevertheless, and it is hereby agreed between and by the parties to these presents, that if the said G. H., his heirs, executors, or administrators, shall, contrary to the covenant hereinbefore for that purpose contained, refuse or neglect to make good the deficiency of the fund firstly hereinbefore provided for defraying the expenses of the renewal of the said leasehold premises, and also in case there shall be any such deficiency after the death of the said G. H., Then and in either of such cases, and so often as the same shall happen, they the said A. B., C. D., and E. F., and the survivors or survivor of them, and the executors, administrators, and assigns of such survivor, shall by mortgage of the said leasehold premises, or by and out of the rents, issues, and profits thereof, in the meantime, raise such sum or sums of money as they or he shall think fit for renewing the subsisting lease for the time being of the said leasehold premises, and apply the same or a competent part thereof in or towards the defraying the expenses of the said renewal; and pay the surplus thereof, if any, to the said G. H., his executors, administrators, and assigns, for his and their proper use and benefit; But nevertheless it is hereby expressly agreed and declared, between and by the parties to these presents, that the provision lastly hereinbefore

made for providing for the expenses of the said renewal, in case the fund firstly hereinbefore provided for the same shall prove deficient, shall not discharge the said G. H., his heirs, executors, or administrators, from the obligation of making good such deficiency under his covenant for that purpose hereinbefore contained; And it is hereby further agreed and declared, that the said A. B., C. D., and E. F., and the survivors or survivor ofth em, and the executors, administrators, and assigns of such survivor, shall stand possessed of and interested in the said messuages &c. and premises to be comprised in every such renewed lease, for and during their or his estate and interest therein, by virtue of or under every such renewed lease, Upon such trusts as are hereinbefore declared or contained of and concerning the said leasehold premises, or such and so many of them as shall be then existing undetermined or capable of taking effect.

To pay rents and perform covenants, and by demise, sale, or mortgage, raise fines for renewal, and subject thereto to same uses as freeholds. Proviso, that person taking an estate tail in freehold, not to have an absolute interest in leaseholds until twenty-one, or dying under age leaving issue.

LXXVIII. Upon trust from time to time, by and out of the rents, issues, and profits of the same premises, to pay the rents and reservations, and perform and fulfil the covenants, clauses, and agreements, in and by the said indenture of lease, or any future lease to be, reserved and contained, and which on the tenant's part ought to be paid and performed; And also from time to time, by and out of the rents, issues, and profits, or by demise, mortgage, or sale of the same premises, or by any other ways or means, to levy and raise such sum of money as shall be necessary for satisfying the fines payable on any renewal, and all expenses attending the same; and subject thereto Upon trust that all and singular the said leasehold premises, with the appurtenances, shall remain and go along with the freehold estates hereinbefore granted and released, and to be therewith held and enjoyed; And that the rents, issues, and profits thereof shall be received and taken by the same persons, and be applicable to the same uses, and be subject and liable, together with and in aid of such freehold estates, to the same charges and payments, and the same powers of leasing, selling, and exchanging, and other powers and agreements, as are hereinbefore limited, expressed, and declared con-

cerning the same freehold estates, or as near thereto as the rules of equity will permit. And it is hereby provided, that no person who shall have an estate tail in the said freehold estates, shall have an absolute interest in the said leasehold premises, until such person shall attain twenty-one, or die under that age leaving issue.

To add dividends and interest of legacy to capital.

LXXIX. Upon trust, that they the said A. B. and C. D., or the survivor of them, his executors or administrators, do and shall add all dividends and interests now due for the said legacy, or sum of £—— capital stock, and share of personal estate hereby assigned, or intended so to be, to the principal or capital of the same legacy and share respectively, as part thereof, to the intent that the same may be deemed principal monies; And in the next place, do and shall, by and out of the same legacy, share, dividends, and interest respectively, pay and satisfy unto the said E. F., his executors or administrators, the sum of £—— of lawful money of Great Britain, for the expenses which have been incurred by him the said E. F., by reason or on account of his being named a legatee and executor in the said recited will of the said G. H., and the suits which have been instituted concerning the same; And also do and shall from time to time pay and satisfy unto the said E. F., his executors, administrators, and assigns respectively, all costs, charges, and expenses, as between attorney and client, which the said E. F., his heirs, executors, and administrators, and every of them, shall from time to time, and in the mean time, until the said last-mentioned legacy or sum of £—— capital stock, and share of personal estate, shall become payable, and shall be actually paid, pursuant to the trusts hereinafter contained, severally and respectively incur and disburse, or become liable to pay, for and in respect of any suit or suits now depending, or which at any time, and from time to time hereafter, shall be instituted against the said E. F., his heirs, executors, or administrators, or to which he or they shall be made a party or parties, for or by reason or on account of the said recited will and codicils of the said G. H., or the probate of the same will or codicils, or all or any of the trusts, devises, bequests, or dispositions contained in the

And pay executor a certain sum for expenses incurred in that character.

And all costs and expenses as between attorney and client which such executor shall incur in respect of any suit concerning the will, probate, &c.

same will and codicils respectively, or the refusal to act in the execution of all or any of the same trusts, or on any other account, in anywise concerning the said recited will and codicils of the said G. H., or his real or personal estate, or the execution of these presents, or the trusts hereinafter contained, first deducting out of such costs, charges, and expenses the costs, charges, and expenses, (if any), which shall be allowed to the said E. F., his heirs, executors, or administrators, and received by him or them, under or by virtue of the order, judgment, or decree of any court or courts, in which all or any of such suits and proceedings shall from time to time be depending; And upon this further trust, that subject, and without prejudice to the trusts hereinbefore declared, they &c.

Such costs as the court shall allow to be first deducted.

LXXX. Upon trust for and for the benefit of the said A. B., the tenant in tail, his executors, administrators, and assigns, so and in such manner, that the said sum of £——, and all interest to become due for the same, may be and may be deemed part of his personal estate, unless and until he shall by some writing under his hand declare that the hereditaments and premises hereby assured, or intended so to be, shall be discharged of and from the payment of the said sum of £——.

Where a debt chargeable on real estate is assigned, in trust for the tenant in tail of that estate, to be kept on foot as personal estate for his benefit.

LXXXI. And it is hereby agreed and declared between and by the said parties to these presents, that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, or assigns of such survivor, and all and every other person or persons in whom the said premises shall become vested, shall stand and be possessed of and interested in the same securities respectively, in trust for the said E. F., his executors, administrators, or assigns, and do and shall assign and dispose of the same, as he the said E. F., his executors, administrators, or assigns, shall from time to time direct or appoint.

Of money recoverable upon bond.

LXXXII. Upon the same or the like trusts, and for the same or the like estates, interests, and purposes, and subject to the same or the like limitations, powers, provi-

Of leasehold, by reference to uses of freehold, except that will

under power of appointment may be attested by two instead of three witnesses.

soes, and agreements as are hereinbefore and hereinafter limited, expressed, and declared of and concerning the said freehold hereditaments, or as near thereto as may be, and the nature or tenure of the property, and the rules of law and equity, will permit, except that the said powers of appointment, as far as the same are required to be executed by any will or wills, or testamentary writing or writings to be attested by three or more witnesses, may be executed by any will or wills, or testamentary writing or writings attested by two witnesses.

By reference, except as varied by present conveyance.

LXXXIII. Upon, under, and subject to such and the same or the like trusts, ends, intents, and purposes as the said A. B. now holds the same messuages and hereditaments, except so far as the same trusts, ends, intents, and purposes are altered or varied by these presents; and also upon and under and subject to the said trusts, ends, intents, and purposes as altered or varied by these presents, &c.

Of canal share by reference to trusts of settlement. (Indorsed on printed assignment).

LXXXIV. The within-mentioned share of the navigation called &c. hath been assigned to the within-named A. B., her executors, administrators, and assigns, To the intent that the same may be held, and the said A.B. doth hereby acknowledge that the same is to be held by him and them upon the trusts, and for the ends, intents, and purposes declared and expressed concerning the same, in or by a certain indenture bearing even date with the within-written assignment, and made between the within-named &c.

Trust to raise money to be awarded, and declaration that the interest in the lands shall be considered as personal property.

LXXXV. And it is hereby declared and agreed by and between the parties to these presents, that the freehold and leasehold lands and hereditaments, and policies of insurance and tontine shares, respectively hereby released, and also assigned or otherwise assured or intended so to be, shall be held by the said A. B. and C. D., their heirs, executors, administrators, and assigns, Upon trust that they the said A. B. and C. D., and the survivor of them, his heirs, executors, administrators, and assigns, do and shall permit

and suffer the said E. F., his heirs, executors, administrators, and assigns, to receive and take the rent, or hold and enjoy the possession of the said hereditaments and premises hereby released and assigned or otherwise assured, or intended so to be, in the meantime, and until the —— day of ——, or such other time as shall be limited for making the award hereinbefore mentioned; And in case such sum as shall on or before the said —— day of ——, or such other time as aforesaid, be awarded due to the said A. B. and C. D., or the survivor of them, his executors or administrators, shall be paid to them or him under and by virtue of the award to be made as aforesaid, pursuant to the condition of the said recited bond; or in case it shall appear by the said award, to be made as aforesaid, that no money is due from the said E. F. to the said A. B. and C. D., or either of them, then and in either of the said cases, it is hereby declared, directed, and agreed, that the said A. B. and C. D., or the survivor of them, his heirs, executors, administrators, or assigns, shall re-convey and re-assign all the said hereditaments and premises unto the said E. F., his heirs, executors, administrators, and assigns, or to whom he or they shall direct or appoint, according to the nature or quality of the estate and interest of the said A. B. and C. D. in the same respectively. And in case no such award as aforesaid shall be made within the time limited in that behalf, or in case such award shall be made, and a sum of money be thereby awarded or declared to be due to the said A. B. and C. D., or the survivor of them, his executors or administrators, and the same sum of money shall not be paid pursuant to the directions of the said award, then and in either of the said cases, and from thenceforth, it is hereby declared and agreed by and between the parties to these presents, and the said E. F. doth hereby direct, that, as between himself and his heirs on the one part, and himself, his executors, and administrators on the other part, the estate and interest of him the said E. F. of and in the said freehold hereditaments hereby released or otherwise assured, or intended so to be, shall be considered as or in the nature of personal property, for the benefit of the said E. F., his executors and administrators, in exclusion of the heirs at law of him the said

E. F., although such sale or sales as hereinafter mentioned shall be made after the decease of him the said E. F.

Limitation to trustees to support contingent remainders, and trusts of their estate.

LXXXVI. And from and after the determination of the estate hereby limited to the use of the said A. B., for his life (*a*) as aforesaid, to the use of the said E. F., G. H., and their heirs, for and during the natural life of the said A. B.(*b*), upon trust, to support the contingent uses and estates hereinafter limited, and protect the same from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall require; yet nevertheless to permit and suffer the said A. B. and his assigns to receive and take the rents and profits of the said manor, &c. and other hereditaments hereby released or otherwise assured, during the term of his natural life (*c*), and from and after the(*d*) decease of the said A. B., to the use &c.

Variations.

(*a*) Or,—

"A. B. and C. D., for their lives."

(*b*) Or,—

1. "Natural lives of the said A. B. and C. D."

2. "The respective natural lives of the several tenants for life hereinbefore mentioned, as to the hereditaments respectively limited to them as aforesaid, and from and after their respective deceases, for and during the natural life of the said I. K., upon trust &c."

(*c*) Or,—

1. "To permit and suffer the said A. B. and his assigns during her life, and after his death then the said C. D. and his assigns during her life, to receive and take the rents and profits of the said manor &c., and other hereditaments hereby released or otherwise assured; And from &c."

2. "To permit and suffer the several tenants for life, and their assigns, as to the hereditaments limited to them respectively, during their natural lives, and after their respective deceases the said I. K. and his assigns, to receive and take &c."

(*d*) 1. "Respective deceases of the said A. B. and C. D."

Another form. (In wills).

LXXXVII. And from and immediately after the determination of that estate, by forfeiture or otherwise, in the lifetime of my said son A. B., to the use of the said C. D. and E. F., and their heirs, during the life of my said son A. B., in trust by the usual ways and means to preserve the contingent uses and estates hereinafter limited; and from and immediately after the decease of the said A. B., to the use &c.

Trusts to sell and to stand possessed of proceeds upon the trusts declared by an indenture of even date, being a settlement in contemplation of marriage.

LXXXVIII. Upon the trusts nevertheless, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or declared, and contained or referred to, of or concerning the same, that is to say, In trust for the said A. B., his heirs and assigns, until the said intended marriage shall be duly had and solemnized, and from and immediately after the solemnization thereof, Upon trust that they the said C. D. and E. F., and the survivor of them, and the heirs and assigns of such survivor, do and shall at any time or times thereafter, with the consent in writing of the said A. B. and G. H. his intended wife, during their joint lives, and after the decease of either of them, with the consent in writing of the survivor of them during his or her life; and after the decease of such survivor, then at the discretion of them the said C. D. and E. F., and the survivor of them, and the heirs and assigns of such survivor, absolutely sell and dispose of the said messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, either entirely and altogether, or in parcels, by public auction or private contract, to any person or persons willing to become the purchaser or purchasers thereof respectively, for such price or prices, or sum or sums of money as to the said C. D. and E. F., or the survivor of them, or the heirs or assigns of such

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2. "Respective deceases of the said several tenants for life respectively, and also of the said I. K."

The second variations occurred in a will where different hereditaments were limited to several persons respectively for their lives; remainder, as to all the hereditaments, to another.

survivor, shall seem proper. And for promoting and facilitating such sale or sales, Do and shall, with such consent or at such discretion as aforesaid, enter into, make, and execute all such contracts, covenants, agreements, conveyances, assurances, acts, deeds, matters, and things as to the said C. D. and E. F., or the survivor of them, or the heirs or assigns of such survivor, shall seem meet. And it is hereby agreed and declared between and by the said parties to these presents, that the receipt or receipts in writing of the said C. D. and E. F., or the survivor of them, or the heirs or assigns of such survivor, for any sum or sums of money payable to them or him under or by virtue of these presents, shall be sufficient and effectual discharges for the same respectively, or so much thereof respectively as in such receipt or receipts respectively shall be expressed or acknowledged to be received, and that the person or persons to whom the same respectively shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application of the money therein respectively expressed and acknowledged to be received. And it is hereby agreed and declared between and by the said parties to these presents, that the said C. D. and E. F., and the survivor of them, and the heirs and assigns of such survivor, shall stand and be possessed of and interested in the sum and sums of money to arise or be produced by any sale or sales which shall be made by them or him, in pursuance of these presents, of the said messuages and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part or parts thereof, and also of and in the rents, issues, and profits of the said messuages and other hereditaments, until the same shall be sold, upon the trusts, to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations expressed or declared and contained of and concerning the same, in and by a certain indenture already prepared and engrossed, and bearing or intended to bear even date with these presents, and made or expressed to be made between &c.

Trustees' receipts to be sufficient discharges.

To sell, giving right of pre-emption to a particular person.

LXXXIX. Upon trust that the said A. B. and C. D., or the survivor of them, his heirs or assigns, Do, and shall, without any further direction or authority by or from the said E. F., G. H., and I. K., or any person or persons claiming or to claim by, from, through, or under or in right of them, or either of them, sell and dispose of the said messuage and tenement, lands, and premises hereinbefore released, or intended so to be, unto the said A. A., if he shall be living, and choose to purchase the same, for the sum of £——, under the option given him by the said will of the said B. B. deceased of purchasing the same; but if the said A. A. shall be dead, or if living shall decline such option, then do and shall sell and dispose of the same premises, either by public auction or private contract, unto any other person or persons, for the best price or prices that can or may be reasonably obtained for the same; and do and shall convey and assure the premises so to be sold unto the said A. A., his heirs and assigns for ever, or as he or they shall direct, in case he shall purchase the same; or in case of his refusal to purchase the same, then do and shall convey and assure the premises unto such other person or persons who shall purchase the same, his, her, or their respective heirs and assigns for ever, or as he, she, or they shall direct; And it is hereby declared and agreed that the receipt or receipts of the said A. B. and C. D., or of the survivor of them, his heirs, executors, administrators, or assigns, shall be a good and sufficient discharge or good and sufficient discharges for the money to be produced by such sale or sales as aforesaid, and that the person or persons paying such money, and taking such receipt or receipts as aforesaid, shall not be bound to see to the application thereof.

Of proceeds of sale in equal fourth parts.

XC. And it is hereby declared and agreed that the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand possessed of the money to arise by such sale or sales as aforesaid, (after deducting the costs, charges, and expenses attending such sale or sales, or otherwise to be incurred in the execution of the trusts of these presents), Upon the trusts following; (that is to say), As to one equal

fourth part thereof, In trust for the said E. F., her executors, administrators, and assigns; as to one other equal fourth part thereof, In trust for the said G. H., her executors, administrators, and assigns; as to one other equal fourth part thereof, In trust for the said I. K., her executors, administrators, and assigns; and as to the remaining fourth part thereof, In trust for the said L. M., his executors, administrators, and assigns, provided he shall be living at the time of completing such sale or sales as aforesaid: But if the said L. M. shall be then dead, in such case the said trustees or trustee for the time being shall stand possessed of the said last-mentioned one fourth part of the monies to arise by such sale or sales as aforesaid, In trust for the said M. M. &c., or such of them as have attained or shall live to attain the age of twenty-one years, in equal shares and proportions; and in case any of the said children of the said L. M. shall not then have attained to the age of twenty-one years, then and in such case the trustees or trustee for the time being shall, at their or his discretion, either apply the presumptive share of such child or children for or towards his, her, or their maintenance and education, or for his, her, or their advancement in the world, or shall lay out and invest the same in the names or name of the said trustees or trustee in any of the public stocks, funds, or securities at interest, In trust for such child or children respectively, as and when he, she, or they shall attain the age of twenty-one years, with power in the meantime to apply the interest and dividends thereof, or to sell the capital for the maintenance and advancement of such child or children, according to their presumptive rights and interests therein.

As to the last fourth part, provided the person designated shall not be living at the time of sale, in trust for such of certain children as shall attain twenty-one.

Presumptive share to be applied for maintenance and advancement.

Declaration of trusts of freehold and copyhold hereditaments.

XCI. And it is hereby agreed and declared between and by the parties to these presents, that the said A. B. and C. D., and their heirs, shall stand and be seised of the freehold hereditaments hereinbefore granted and released, or expressed and intended so to be, and of the copyhold hereditaments hereinbefore covenanted to be surrendered, with their respective appurtenances, Upon the trusts, and to and for the intents and purposes hereinafter expressed or declared of or concerning the same; (that is to say), In trust for the said E. F., his heirs and assigns, until the said in-

In trust for intended husband in fee until mar-

tended marriage shall be duly had and solemnized; and from and immediately after the solemnization thereof, Upon trust for the said E. F. and his assigns, during his life, without impeachment of waste; and from and immediately after his decease, upon trust that the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, in case the said intended marriage shall take effect, and if the said G. H. shall survive the said E. F., do and shall, by and out of the rents, issues, and profits of the said freehold and copyhold hereditaments, levy and raise the annual sum of £—— of lawful money of Great Britain, and pay the same to the said G. H. and her assigns during the time of her natural life; And it is hereby agreed and declared between and by the said parties to these presents, that the same annual sum is intended to be, and the said G. H. doth hereby accept the same for her jointure; (a) [And in lieu and bar of all the dower or thirds, which at the common law, or by custom or otherwise, she the said G. H. might otherwise be entitled to, into, from, or out of any hereditaments, of or to which he the said E. F. shall or may at any time or times, during the said intended coverture, be seised of, or otherwise entitled to, for an estate of inheritance], and that the same shall be paid by four even and equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year; and that the first quarterly payment thereof shall be made on such of the said days as shall first and next happen after the decease of the said E. F.; And, subject to the said annual sum of £——, do and shall, by mortgage or sale of the same premises, or of a competent part thereof, levy and raise the sum of £—— of lawful money of Great Britain, and pay the same to all and every, or such one or more, exclusively of the other or others of the children of the said intended marriage, or in trust for all and every, or such one or more, exclusively of the other or others of the issue, born in the lifetime of the said E. F. and G. H., or the survivor of them, of any one or more of the children of the said

riage, and after solemnization, for him for life.

After death of husband, in case marriage take effect, and wife survive, to pay wife out of the rents an annuity for life as her jointure.

Subject to jointure, to raise by mortgage or sale a sum of money for children's portions, as husband and wife shall, during their joint lives, appoint; and in default, as survivor shall by deed or will appoint.

(a) This clause is now no longer necessary. Vide tit. Uses, art. IX. note.

E. F., by the said G. H., or to all and every or such one or more, exclusively of the other or others of such children, and all and every or such one or more, exclusively of the other or others of such issue, and for such interest or interests, in such parts, shares, and proportions, and subject to such provisoes and stipulations as the said E. F. and G. H., during their joint lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by them sealed and delivered in the presence of and to be attested by two or more credible witnesses, shall from time to time direct or appoint; and, for want of such joint direction or appointment, as the survivor of them the said E. F. and G. H. shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicils thereto, to be by him or her signed and published in the presence of, and to be attested by the like number of credible witnesses, shall from time to time direct or appoint; And in default of such direction or appointment, do and shall stand and be possessed of and interested in the said sum of £——, In trust for all and every the children and child of the said E. F. by the said G. H., his intended wife, who being a son or sons shall attain the age of twenty-one years, or depart this life under that age leaving issue, one or more child or children of his or their body or respective bodies living at the time of his or their decease or respective deceases, or born in due time after, or who being a daughter or daughters shall attain the age of twenty-one years or marry; the said sum of £—— to be divided between or among them, if more than one, in equal shares and proportions as tenants in common; And if there shall be but one such child, then the whole to be in trust for that one child, and the same to be an interest vested or interests vested in such child or children respectively, on or at the ages, days, or times hereinbefore mentioned, and to be paid to him, her, or them, on or at the same ages, days, or times, if the same shall happen after the decease of the survivor of them the said E. F. and G. H.; but, if the same shall happen in the lifetime of

In default of appointment, for children as tenants in common.

them the said E. F. and G. H., then immediately upon or after the decease of such survivor: Provided always, that no child taking, or whose issue shall take any share of and in the said hereditaments, by virtue of or under any appointment to be made by the said E. F. and G. H., or either of them, in exercise of the powers or authorities hereinbefore contained, shall take any part or share of and in the unappointed part of the same hereditaments, without bringing his or her appointed share or shares into hotchpot, and accounting for the same accordingly (*a*). [*Add clauses for maintenance and advancement*]. And subject as hereinbefore is mentioned, do and shall, immediately after the decease of the said E. F., stand and be seised of the said freehold and copyhold hereditaments, In trust for all and every or such one or more exclusively of the other or others of the children of the said E. F. by the said G. H., his intended wife, or in trust for all and every or such one or more exclusively of the other or others of the issue born in the lifetime of the said E. F. and G. H., or the survivor of them, of any one or more of the said children of the said E. F. and G. H., or both, In trust for all and every or such one or more of the said issue, and for such estate or estates, interest or interests, in such parts, shares, and proportions, and charged and chargeable with such annual or other sum or sums of money, and with such remainders or limitations over, for the benefit of some one or more of the said children or issue, as the said E. F. and G. H., his intended wife, shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by them sealed and delivered in the presence of and to be attested by two or more credible witnesses, shall from time to time direct or appoint; and, in default of such direction or appointment, as the survivor of them the said E. F. and G. H. shall by any deed or deeds, instrument or instruments in writing, to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his or her

Hotchpot clause.

Subject as hereinbefore is mentioned, to stand and be seised of the freehold and copyhold, in trust for children, as husband and wife or survivor shall appoint.

(*a*) As to hotchpot in cases of customary division, vide Hargrave's Co. Litt. 176, b. n. 8 & 9.

last will and testament in writing, or any codicil or codicils thereto, to be by him or her signed, and published in the presence of and to be attested by three or more credible witnesses, direct or appoint. And in default of and until any such direction, limitation, or appointment, and so far as every or any such direction or appointment shall not extend, In trust for the first and every other son of the said E. F. by the said G. H., severally, successively, and in remainder, one after another, in order and course as they shall respectively be in priority of birth, and the heirs male of the body and respective bodies of such son and sons lawfully issuing, the elder of such sons and the heirs male of his body lawfully issuing to be always preferred and to take before the younger of such sons and the heirs male of his and their body and respective bodies lawfully issuing; and for default of such issue, In trust for all and every the daughters and daughter of the said E. F. by the said G. H., to be divided between or among them, (if more than one), in equal shares and proportions as tenants in common, and the heirs of the body and respective bodies of all and every such daughter and daughters lawfully issuing; And in case any one or more of the said daughters shall depart this life, and there shall be a failure of issue of her or their body or respective bodies, then as well the original share or shares of such of them so dying, and of whom there shall be a failure of issue as aforesaid, as also such share or shares as shall accrue to her or them, or her or their issue, on the death and failure of issue of any other or others of the said daughters, In trust for the others or other of the said daughters, and the heirs of her and their body and respective bodies lawfully issuing, and if more than one, in equal shares and proportions as tenants in common; And on the death or failure of issue of all the said daughters of the said intended marriage but one, or if there shall be but one such daughter of the said intended marriage, then, as to the whole of the said freehold and copyhold hereditaments, In trust for that one or only daughter, and the heirs of her body; And in default of such issue, if the said G. H. shall survive the said E. F., In trust for the said G. H., her heirs and

In default of appointment, in trust for sons successively in tail male.

In default, in trust for daughters as tenants in common in tail, with cross-remainders in tail.

In default of issue, if wife shall survive husband, in trust for her in fee; but if not,

assigns; But if the said G. H. shall depart this life in the lifetime of the said E. F., Then upon such trusts, and for such intents and purposes, as she the said G. H. shall, by her last will and testament in writing, or any codicil or codicils thereto, to be by her signed and published in the presence of, and to be attested by, three or more credible witnesses, direct or appoint; And in default of and until such direction or appointment, and so far as every or any such direction or appointment shall not extend, In trust for the right heirs of the said G. H.

as she shall by will appoint; and in default of appointment, for her right heirs.

XCII. In trust for the said A. D. and C. D., their heirs and assigns, until the said intended marriage shall be duly had and solemnized, and from and immediately after the solemnization thereof, Upon trust, that they the said E. F. and G. H., and the survivor of them, and the heirs and assigns of such survivor, (if the said C. D. shall make default in payment of the said sum of £——, or any part thereof, at the time appointed by the condition of his said bond or obligation for the payment thereof, and according to the true intent and meaning of these presents), Do and shall at such time or times, and in such manner as they or he shall think proper, by sale, mortgage, or other disposition of the said capital messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or a competent part or competent parts thereof, levy and raise the sum of £——, of lawful money of Great Britain, and all interest due for the same, and stand and be possessed of and interested in the same, Upon the trusts, to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore expressed or declared of or concerning the same; And (subject to the levying and raising the said sum of £——, and interest, eventually, as hereinbefore is mentioned), Do and shall stand and be seised of the said capital messuage and other hereditaments, In trust for the said C. D. and his assigns, during the term of his life, without impeachment of waste; And from and immediately after his decease, In trust for the said I. K. and her assigns during the term of her life, without im-

Of freeholds for father and son until solemnization of intended marriage; and afterwards, if default be made in payment of money secured by bond, to raise by sale or mortgage a certain sum of money, and hold the same upon the trusts before declared.

Subject thereto, to stand seised thereof in trust for son for life, remainder for his intended wife for life; remainder for the children of the marriage as husband shall appoint by deed or will.

peachment of waste; And after the decease of the survivor of them the said C. D. and I. K., In trust for all and every or such one or more, exclusively of the other or others of the children of the said C. D. by the said I. K., or of the issue born in the lifetime of the said C. D. and I. K., or the survivor of them, of the said child or children or any of them, at such time or times, and for such estate and estates, interest and interests, in such parts, shares, and proportions, and charged and chargeable with such annual or other sum or sums of money for the benefit of some one or more of the said children, as the said C. D. shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and to be attested by three or more credible witnesses, direct, limit, or appoint; And in default of such direction, limitation, or appointment, then as the said I. K., in case she shall survive the said C. D., shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by her signed, sealed, and delivered in the presence of and to be attested by three or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, to be by her signed and published in the presence of and to be attested by three or more credible witnesses, shall direct, limit, or appoint; And in default of any such direction, limitation, or appointment, In trust for all and every the children and child of the said C. D. by the said I. K., and the heirs of his, her, and their body or respective bodies, to be divided between or among them (if more than one), in equal shares and proportions as tenants in common: And in case any one or more of the said children shall depart this life, and there shall be a failure of issue of his, her, or their body or respective bodies, then as well the share or shares hereby originally provided for each such child or children, as the share or shares surviving or accruing to him, her, or them on the death and failure of issue of any other or others of

In default, as wife shall appoint by deed or will.

In default, for the children as tenants in common, with benefit of survivorship.

the said children, shall go and be in trust for the other or others of the said child or children, and the heirs of his or their body and respective bodies, and such last-mentioned children, if more than one, to take in equal shares as tenants in common: And in case all the children of the said intended marriage except one shall depart this life, and there shall be a failure of issue of their bodies, or if there shall be but one such child, then the entirety of the said messuage and other hereditaments to go and be in trust for such one or only child, and the heirs of his or her body issuing; and for default of such issue, In trust for the right heirs of the said C. D.: Provided always, that no child taking or whose issue shall take any share of and in the said messuage and hereditaments, by virtue of or under any appointment to be made by the said C. D. or I. K., in exercise of the powers or authorities hereinbefore contained, shall take any part or share of and in the unappointed part of the same messuage and other hereditaments, without bringing his or her appointed share or shares into hotchpot, and accounting for the same accordingly.

In default of children, for the right heirs of husband.

Clause of hotchpot.

XCIII. Upon trust that they the said A. B. and C. D., and the survivor of them, his heirs and assigns, do and shall permit and suffer the said E. F., G. H., and I. K., or such of them as for the time being shall remain unmarried, to reside in the said messuage or tenement, and to occupy and enjoy the lands and appurtenances thereto belonging; And from time to time, so long as the said E. F., G. H., and I. K., or any one or more of them, shall continue unmarried, and reside in the said messuage or tenement, do and shall, by the direction of such of them as shall so continue to reside in the said messuage or tenement, and continue unmarried, demise or lease such of the lands or grounds belonging to the said messuage or tenement as the said person or persons so resident in the said messuage or tenement may not choose to occupy, unto any person or persons for any term or number of years not exceeding —— years, at the best rents that can be reasonably obtained for the same; and do and shall pay and apply the rents to be received upon such lease or leases unto such of them the said E. F., G. H., and I. K.,

To permit certain persons whilst unmarried to reside in messuage, and occupy the lands thereto belonging, and, by the direction of such spinsters and residents, to lease the lands for their advantage.

as for the time being shall continue to reside in the said messuage or tenement, and remain unmarried; And from and after the decease of the survivor of them the said E. F., G. H., and I. K., in case they shall all die without having been married, or in case they shall all marry, then so soon as the one last marrying shall marry, or from and after such one or more of them as shall remain unmarried shall cease to reside in the said messuage or tenement, then, in any or either of the said cases which ever shall first happen, Upon trust &c.

To permit husband and wife to occupy house &c., during their joint lives, and the life of survivor, subject to rents and covenants, provided they make it their habitual place of residence, and keep the same in good repair and insured.

XCIV. Upon trust that they the said A. B. and C. D. do and shall, from and immediately after my decease, permit and suffer E. F., of &c., and G., the wife of the said E. F., during their joint lives, and the survivor of them, during his or her life (subject, however, as is hereinafter mentioned), to occupy and enjoy the said freehold and leasehold messuage or dwelling-house, lands, tenements, and hereditaments, and the said furniture and fixtures, goods and chattels, to and for their, his, and her own use and benefit, subject however to the payment of the rent and performance of the covenants reserved and contained in the indenture of lease, whereby the said leasehold hereditaments now are or hereafter shall be demised; and provided also that the said E. F. and G. his wife do and shall, during their, his, and her lives and life, make the said freehold premises their habitual place of residence, and do and shall keep the same in good and substantial repair, and do and shall also from time to time, and at all times, well and effectually keep the same insured in some or one of the public offices of insurance established in London or Westminster against loss or damage by fire, in the sum of £—— at the least; And from and immediately after the decease of the survivor of them the said E. F. and G. his wife, or in case the said E. F. and G. his wife shall refuse or decline to make the said freehold messuage or premises their habitual place of residence, or to keep the same in good and substantial repair, or to insure and keep insured the same in manner aforesaid, Upon trust that they the said A. B. and C. D., their heirs, executors, administrators, and assigns, do and shall stand and be

After death of survivor, or in default, to sell. (In Wills).

possessed of and interested in the said messuage or dwelling-house, household furniture, goods, and chattels, and the said freehold and leasehold hereditaments and premises, with the appurtenances; Upon trust that they the said A. B. and C. D., their heirs, executors, administrators, and assigns, do and shall, as soon as conveniently may be after the happening of any of the events aforesaid, absolutely sell and dispose of the said messuage or dwelling-house, furniture, goods, and chattels, and freehold and leasehold lands and hereditaments, either altogether or in parcels, by private contract or public auction, for such price or sum or sums of money as the said A. B. and C. D., their heirs, executors, administrators, or assigns, may think reasonable; And for the purposes aforesaid do and shall enter into, make, do, and execute all such contracts, covenants, agreements, conveyances, assurances, acts, deeds, matters, and things as to him and them shall seem proper.

Of term to raise pin-money. (*Mr. Humphreys's form*).

XCV. And it is hereby agreed and declared between and by the parties to these presents, that the manor, messuages, lands, tithes, and other hereditaments hereby limited to the said A. B. and C. D. [*trustees for wife's pin-money*], their executors, administrators, and assigns, for the said term of ninety-nine years, are so limited to them upon trust, that they the said A. B. and C. D., or the survivor of them, their or his executors, administrators, or assigns, do and shall, during so many years of the said term of ninety-nine years as the said E. F. and G. H. shall jointly live, by and out of the rents, issues, and profits of the manor, messuages, lands, tithes, and other hereditaments comprised in the same term, or by demising, mortgaging, or selling the same, or any part thereof, or by all or any of the same ways or means, or any other reasonable ways or means, levy and raiseth e clear yearly sum of £—— of lawful British money, by two equal half-yearly payments, on the 1st day of October and the 1st day of April in every year, the first payment thereof to be so raised on such of the said half-yearly days of payment as shall next happen after the solemnization of the said intended marriage, and do and shall pay the said yearly sum of £——, when and as the same shall from time to

time become due and be received, unto such person or persons, and for such intents and purposes as the said G. H., by any writing or writings to be signed with her own hand, shall, notwithstanding her said intended coverture, from time to time, when and as the same shall become due, but not by way of assignment, charge, or other anticipation thereof, direct or appoint; and until and in default of such direction or appointment, into her own proper hands, for her own sole and separate benefit, independent of and free from the debts, controul, or interference of her said intended husband; For which purpose it is hereby declared, that the receipts in writing of the said G. H., or of such her appointee or appointees as aforesaid, shall, notwithstanding her said intended coverture, be good and effectual discharges for the same yearly sum, or any part thereof respectively; And do and shall, from time to time, after full payment and satisfaction of the said yearly sum of £——, and all arrears thereof, and all costs, charges, and expenses attending the execution of the trusts of the said term of ninety-nine years, and in relation thereto, pay the surplus of the money to be raised by the ways and means aforesaid to, and permit and suffer the overplus and residue of the rents, issues, and profits of the said manor, messuages, lands, and other hereditaments to be had and received by the said E. F. and his assigns for his life, for his and their own benefit.

Of term; first, to secure jointure-rent-charge; secondly, to raise portions for younger children. (*Mr. Humphreys's form*).

XCVI. And it is hereby further agreed and declared between and by the parties to these presents, that the said manor, messuages, lands, and other hereditaments hereby limited to the said I. K. and L. M. for the said term of five hundred years, are so limited to them upon and for the trusts, intents, and purposes following; (that is to say), upon trust in the first place, that in case the said annual sum or yearly rent-charge of £—— hereby limited to the said G. H. from and after the decease of the said E. F., if she shall survive him as aforesaid, or any part thereof, shall be in arrear and unpaid for the space of thirty days or more next after any of the days hereby appointed for payment thereof, Then and in such case, and so often as the same shall happen, they the said I. K. and L. M., and the sur-

vivor of them, their or his executors, administrators, or assigns, do and shall, at the request in writing of the said G. H. or her assigns, although there shall not have been any legal demand made thereof, by and out of the rents, issues, and profits of the said manor, messuages, lands, and other hereditaments comprised in the said term of five hundred years, or by demising, mortgaging, or selling the same, or any part thereof, or by all or any of the said ways or means, or any other reasonable ways or means, levy, raise, pay, and satisfy to the said G. H., or her assigns, the said annual sum or yearly rent-charge of £——, or so much thereof as shall be in arrear and unpaid as aforesaid, and all costs, charges, damages, and expenses to be sustained or incurred by reason of the non-payment thereof; and also levy, raise, retain, and satisfy all costs and expenses attending the execution of the purposes hereby declared; And upon this further trust, that if there shall be any child or children of the said E. F. by the said G. H. his intended wife, other than and besides an eldest or only son, who shall or may, by virtue of or under the limitations hereinbefore contained, be for the time being entitled to the same manor, messuages, lands, and other hereditaments for an estate in tail in possession, or in remainder or reversion immediately expectant on the said term of five hundred years, then and in such case they the said I. K. and L. M., or the survivor of them, his executors, administrators, or assigns, do and shall after the decease of the survivor of them the said E. F. and G. H., or in the lifetime of them or the survivor of them, at and by their, his, or her request or direction in writing, but subject and without prejudice to the said annual sum of £——, payable to the said G. H. during the joint lives of herself and the said E. F. as aforesaid, and the said term of ninety-nine years, and the trusts thereof, and also to the said annual sum or yearly rent-charge of £——, and the powers and remedies for enforcing payment thereof by and out of the rents, issues, and profits of the said manor, messuages, lands, tithes, and other hereditaments comprised in the said term of five hundred years, or by demising, mortgaging, or selling the same, or any part thereof, for all or any part of the same

term, or by all or any of the said ways or means, or any other reasonable ways and means, levy and raise the sum of £—— of lawful British money for the portion or portions of any such child or children, other than and besides an eldest or only son so for the time being entitled as aforesaid to such sum of £——, to vest and be paid and payable to, between, or among such child or children respectively, other than and besides an eldest or only son for the time being entitled as aforesaid in manner hereinafter mentioned; (that is to say), the same to become and be vested in such children if more than one, other than and besides an eldest or only son entitled as aforesaid, or else in any one or more exclusively of the other or others of them, and to be paid to him, her, or them respectively, at such age or respective ages or times, and in such manner, and with such dispositions over to or for the benefit of the others of the same children or any of them, as the said E. F. shall at any time or times after the said intended marriage by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be sealed and delivered by him in the presence of two or more witnesses, or by his last will and testament, in writing or any codicil thereto, to be by him signed and published in the presence of and attested by three or more witnesses, direct or appoint, And for want of any such direction or appointment as aforesaid, or so far as the same if incomplete shall not extend, Then to, between, or among such child or children (except as aforesaid), in manner following; (that is to say), if there shall be but one such child (other than and besides an eldest or only son for the time being entitled as aforesaid), the said sum of £—— to vest in such only child being a younger son at his age of twenty-one years, or being a daughter, at her age of twenty-one years or on the day of her marriage, and to be paid to him or her on or at the same age, day, or time, if the same shall happen after the decease of the said E. F., but if the same shall happen in his lifetime, then immediately after his decease, unless he shall direct the same to be raised and paid in his lifetime as aforesaid; And if there shall be two or more such children other than and besides an eldest or only son, for the time being entitled as aforesaid, then the said sum of £—— to

as the husband shall by will or deed appoint.

In default, to the younger children equally.

vest in and be paid to, between, or among such two or more children, in equal shares and proportions; the share or shares of such of them as shall be a younger son or sons to vest in him or them respectively at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to vest in her or them respectively, at her or their age, or respective ages of twenty-one years, or on the day or respective days of her or their marriage or respective marriages, which shall first happen, and to be paid to them respectively on or at the same ages, days, or times respectively, if the same respectively shall happen after the decease of the said E. F., but if the same shall happen in his lifetime, then immediately after his decease, unless he shall direct the same to be sooner raised and paid as aforesaid: Provided always, and it is hereby agreed and declared between and by the parties to these presents, that no child or children, taking any part of the said sum of £——, under or by virtue of any direction or appointment to be made by the said E. F., in pursuance of the power hereinbefore given for that purpose, shall have or be entitled to any further or other share of or in that part of the said sum of £——, of which no such appointment shall be made, until the other child, or each and every of the other children of the said E. F. by the said G. H., other than and besides an eldest or only son for the time being entitled as aforesaid, shall have become entitled to a share or shares therein, equal in value to the share or shares so to be directed or appointed as aforesaid. Provided always, and it is hereby further agreed and declared, that if there shall be more than one child for whom portions are intended to be hereby provided, and any one or more of them shall die, or, being a younger son or younger sons, shall become an eldest or only son entitled as aforesaid, before he, she, or they shall acquire a vested interest or interests in the said sum of £——, or any part thereof, under or by virtue of the powers hereinbefore contained respecting the same or any of them, then as well the original share intended to be hereby provided for, as also the share or shares by virtue of this present clause surviving or accruing to each and

No child, in favour of whom the parent shall exercise his power of appointment, to take any share in the unappointed residue, until the other children have received portions equal to that appointed.

Benefit of survivorship between the children.

every such child so dying, or such son becoming an eldest or only son entitled as aforesaid of or in the said sum of £——, or so much thereof as shall not have been applied for his or her preferment in the world, in pursuance of the powers hereinafter for that purpose contained, shall vest in, accrue, and belong to the survivor or survivors, or other or others of such children, other than and besides an eldest or only son for the time being entitled as aforesaid, in equal shares and proportions, if more than one, at and in such and the same time or times and manner as are hereinbefore declared and contained of and concerning his, her, or their original share or shares of and in the said sum of £——.

Of term for securing jointure. (Another form).

XCVII. And it is hereby agreed and declared between and by the said parties to these presents, that the said manors, lands, and other hereditaments are hereinbefore limited to the said A. B. and C. D., their executors, administrators, and assigns, for the said term of —— years, Upon the trusts, and to and for the intents and purposes hereinafter expressed or declared of or concerning the same; that is to say, Upon trust, that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall permit and suffer the person or persons to whom the immediate remainder or reversion of the said manors, lands, and other hereditaments comprised in the said term of —— years, expectant upon the determination thereof, shall for the time being belong, under or by virtue of the limitations hereinbefore contained, to receive the rents, issues, and profits of the same manors and other hereditaments, until such default as hereinafter mentioned shall be made of or in payment of the said annual sum or yearly rent-charge of £——, hereinbefore limited to the said E. F., or some part thereof; And upon this further trust, that in case and so often as the said annual sum or yearly rent-charge of £——, or any part thereof, shall be in arrear and unpaid by the space of —— days next after any of the days hereinbefore appointed for payment of the same, they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of

such survivor, Do and shall, although no legal demand shall have been made, by and out of the rents, issues, and profits of the said manors, lands, and other hereditaments, or by demising, leasing, mortgaging, selling, or otherwise disposing of the same manors, lands, and other hereditaments, or any of them, or any part thereof, for all or any part of the said term of —— years, or by bringing any action or actions against all and every or any of the tenants or occupiers of the same hereditaments for the recovery of the rents then in arrear, or by more than one of, or in all the ways and means hereinbefore mentioned, or by such other ways and means as to the said trustee or trustees shall seem meet, levy and raise and pay the said annual sum or yearly rent-charge of £——, or so much thereof as shall be in arrear and unpaid as aforesaid, and all costs, charges, damages, and expenses which the said E. F., her executors, administrators, or assigns, shall incur, sustain, or be put unto by reason of the non-payment thereof; And do and shall pay the residue and overplus (if any) of the monies which shall from time to time be raised, by the ways and means aforesaid, to the person or persons respectively who for the time being shall be entitled to the reversion or remainder of the said manors, lands, and other hereditaments, immediately expectant upon the determination of the said term of —— years, for his and their proper use and benefit.

Of term for raising portions for younger children. (Another form).

XCVIII. And it is hereby agreed and declared, between and by the said parties to these presents, that the said manors, messuages, lands, and other hereditaments are hereinbefore limited to the said A. B. and C. D., their executors, administrators, and assigns, for the said term of —— years, Upon the trusts, and to and for the intents and purposes hereinafter expressed or declared of or concerning the same; (that is to say), In case there shall be any child or children of the said E. F. by the said G. H., his said intended wife, other than and besides an eldest or only son, who, under or by virtue of the limitations hereinbefore contained, shall or may for the time being be entitled in possession or in remainder expectant on the decease of the said E. F., (and subject to the several terms of —— years and —— years), to

the said manors, messuages, lands, and other hereditaments, or to the receipt of the rents, issues, and profits thereof, then and in such case, Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after the decease of the said E. F., or in his lifetime if he shall so direct by any deed or writing to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, by demising, mortgaging, selling, or otherwise disposing of the said manors, messuages, lands, and other hereditaments, or any of them, or any part thereof, for all or any part of the said term of —— years, or by and out of the rents, issues, and profits thereof respectively, or by bringing any action or actions against the tenants or occupiers of the same manors, messuages, lands, and hereditaments, or any of them, for the rent then in arrear, or by more than one of or in all the ways and means aforesaid, or by such other ways and means as to them or him shall seem meet, but subject and without prejudice to the last-mentioned annual sum or yearly rent-charge of £——, and the powers and remedies for recovering and compelling payment of the same, and to the said several terms of —— years and —— years hereby created, and to the several trusts of the same respectively, levy and raise for the portion or portions of such child or children, other than or besides an eldest or only son for the time being entitled as aforesaid, the sum or sums of money hereinafter mentioned; (that is to say), if there shall be but one child of the said E. F. by the said G. H., his said intended wife, whether a son or daughter, other than and besides an eldest or only son for the time being entitled as aforesaid, the sum of £—— of lawful money of Great Britain; And if there shall be two children of the said E. F., by the said G. H., his intended wife, and no more, other than or besides an eldest or only son for the time being entitled as aforesaid, the sum of £—— of like lawful money; And if there shall be three or more such children other than or besides an eldest or only son so for the time being entitled as aforesaid, the sum of £—— of like lawful money; the said sums of £——, £——, or £——, as the case may be, to be in trust for such one child, or all and every or

such one or more, exclusively of the others or other of the child or children of the said E. F. by the said G. H., his said intended wife, (other than or besides an eldest or only son so for the time being entitled as aforesaid), as the case may be, or in trust for all and every or such one or more, exclusively of the others or other of the issue born in the lifetime of the said E. F., of such one child, or any one or more of such children, or both, in trust for such one child, or all and every or such one or more, exclusively of the others or other of such children, as the case may be; and all and every or such one or more, exclusively of the other or others of the issue born as aforesaid, of such one child, or any one or more of such children, and, if more than one, in such shares and proportions, at such age or time or respective ages or times, not happening after the expiration of twenty-one years, to be computed from the decease of the said E. F., and charged with the payment of such annual sum or sums of money to such child or children and issue, or any of them, upon such conditions, with such limitations over, between, or among them, with such provisions for their or any of their maintenance, in such shares and proportions, and generally in such manner for their or any of their benefit, as the said E. F. by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and to be attested by the like number of credible witnesses, shall from time to time direct or appoint; And in default of such direction or appointment, and so far as every or any such direction or appointment shall not extend, the said sums of £——, £——, or £——, as the case may be, to be In trust for the child or all the children, as the case may be, of the said E. F. by the said G. H., his intended wife, other than and except an eldest or only son for the time being entitled as aforesaid, and if more than one, to be divided between or among them in equal shares and proportions, and to be an interest vested or interests vested in such child or children respectively, being a son or sons, at his or their age or respective ages of twenty-one

As husband shall by deed or will appoint.

years, and being a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, and to be paid to him, her, or them respectively, his, her, or their respective executors, administrators, or assigns, on or at the same age, day, or time, or respective ages, days, or times respectively, if the same respectively shall happen after the decease of the said E. F., but if the same shall happen in his lifetime, then immeditealy after his decease, unless he shall direct the same to be sooner raised and paid as aforesaid. Provided always, and it is hereby agreed and declared, that no child taking or whose issue shall take any part or share of the said sum of £——, £——, or £——, as the case may be, under or by virtue of any direction or appointment to be made by the said E. F., in pursuance of the power hereinbefore contained, shall have or be entitled to any further or other share of and in that part of the said sum of £——, £——, or £——, as the case may be, of which no such direction or appointment shall have been made, without bringing his, her, or their appointed share or shares, or the appointed share or shares of his, her, or their issue, into hotchpot, and accounting for the same accordingly. Provided always, and it is hereby agreed and declared, that if there shall be more than one child for whom portions are intended to be hereby provided as aforesaid, and any one or more of them being a son or sons shall depart this life, or become an eldest or only son for the time being, entitled as aforesaid, under the age of twenty-one years, or being a daughter or daughters, shall depart this life under the age of twenty-one years without being or having been married, then and in case no such direction or appointment as aforesaid shall be made by the said E. F. to the contrary, as well the original portion intended to be hereby provided for, as the share or shares by virtue of this present clause surviving or accruing to every such son so dying or becoming an eldest or only son for the time being entitled as aforesaid, and to every such daughter so dying, so much thereof as shall not have been raised or applied for his or her respective advancement in the world, in pursuance of the power hereinafter contained, shall from time to time

Hotchpot clause.

Benefit of survivorship.

go and be in trust for the survivors or survivor, or others or other of such children, not being an eldest or only son for the time being entitled as aforesaid, and as far as circumstances will admit, shall vest in and be paid to him, her, or them, and if more than one, in equal shares and proportions, at the same time or times, and in the same manner as hereinbefore is declared concerning his, her, and their original portions. Provided always nevertheless, and it is hereby agreed and declared between and by the said parties to these presents, that the sons or daughters of the said E. F., by the said G. H., his said intended wife, other than or besides an eldest or only son for the time being entitled as aforesaid, or any of them, or their or any of their issue, shall not, by virtue of or under the trusts hereinbefore declared, by survivorship or otherwise, be entitled to have any greater sum or sums of money for his, her, or their portion or portions than is or are hereinafter mentioned; that is to say, the sum of £—— for the portion of one such child other than or besides an eldest or only son for the time being entitled as aforesaid, or his or her issue, and the sum of £—— for the portions of three or more such children, or their or any of their issue. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, That it shall and may be lawful to and for the said A. B. and C. D. and the survivor of them, and the executors, administrators, and assigns of such survivor, at any time or times after the decease of the said E. F., or in his lifetime, in case he shall so direct, by any writing or writings under his hand, to levy and raise, by the ways and means aforesaid, or any of them, but subject and without prejudice as hereinbefore is mentioned, any part of the portion or portions to which any such child or children as aforesaid shall for the time being be entitled in expectancy, not exceeding in the whole for any one such child one equal half part of his or her then presumptive portion, and apply the money so to be raised for the benefit, advancement, or establishment in the world of such child, in such manner as the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor shall in their or his discretion think fit; And upon this further trust, that they the said A. B. and C. D., and the

Portions of children not to exceed a specified sum.

Trustees empowered to raise part of presumptive portions for advancement of the children.

To raise money for maintenance and education of children.

survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall, after the decease of the said E. F., and until the portion or portions intended to be hereby provided for such child or children as aforesaid shall become payable, but nevertheless subject and without prejudice as aforesaid, by and out of the rents, issues, and profits of the said manors, messuages, lands, and other hereditaments, or any part or parts thereof, levy and raise, and pay and apply, at their or his discretion, for or towards the maintenance and education of such child or children respectively, such yearly sum and sums of money as the said E. F., at any time during his life, by any writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will or testament in writing, or any codicil or codicils thereto, to be by him signed in the presence of and to be attested by the like number of credible witnesses, shall direct or appoint, not exceeding what the interest of the portion or portions intended to be hereby provided for such child or children respectively would amount unto at the rate of £—— for every £100 by the year, were he, she, or they then entitled thereto; And in default of such direction or appointment, such yearly sum or sums of money, not exceeding the amount of such interest as aforesaid, as the said A. B. and C. D., and the survivor of them, and the executors, administrators, or assigns of such survivor, shall think fit; the said yearly sum or sums of money to be raised and paid by four even quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, without any deduction or abatement whatsoever for or on account of any present or future taxes, or any other matter, cause, or thing whatsoever; and the first of the said quarterly payments to be made on such of the said days as shall first and next happen after the decease of the said E. F. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that the said A. B. and C. D., and the survivor of them, or the executors, administrators, or assigns of such survivor, shall not demise, mortgage, sell, or otherwise dispose of any part or parts of the said manors, messuages, lands, and other here-

No mortgage, &c. to be made until some one portion shall become payable.

ditaments comprised in the said term of —— years, until some one of the said portions shall become payable by virtue of the trusts aforesaid; And that the rents, issues, and profits which shall remain after payment of the said annual sum or sums of money payable for or towards the maintenance and education of such child or children as aforesaid shall, until some one of such portions shall become payable as aforesaid, be had and received (but subject and without prejudice as hereinbefore is mentioned) by the person or persons who for the time being, by virtue of the limitations hereinbefore contained, shall be next entitled to the reversion or remainder of the said manors, messuages, lands, and other hereditaments immediately expectant upon the determination of the said term of —— years, to and for his or their own use and benefit. Provided always, and it is hereby further agreed and declared between and by the said parties to these presents, that if the said E. F. shall in his lifetime give or advance to or with any child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money for or towards his, her, or their portion or portions, or his, her, or their advancement or establishment in the world, then and in every or any such case, (unless the said E. F. shall by any writing under his hand direct the contrary), if such advanced sum or sums of money shall be equal to the whole of the portion or portions intended to be hereby provided for such child or children respectively as aforesaid, the same shall be accounted in full satisfaction of the whole of his, her, or their portion or portions; but if such advanced sum or sums of money shall be less than such portion or portions, the same shall be considered as part only of his, her, or their portion or portions, and such money only shall be raised under or by virtue of the trusts of the said term of —— years, for the portion or portions of the said child or children, to or with whom such sum or sums of money shall be so given or advanced by the said E. F. as aforesaid, as, together with the sum or sums of money so to be given or advanced, will amount to and complete the same sum of money intended to be hereby provided for such child or

Residue of rents to be received by reversioner.

Money advanced for children by husband in his lifetime, if equal to intended portion, to be in satisfaction thereof; if less, to be in satisfaction pro tanto.

children respectively, under or by virtue of the trusts of the said term of —— years.

Another form of declaration of trusts of term for raising portions for younger children, with proviso of cesser.

XCIX. And it is hereby declared and agreed by and between the said parties to these presents, that the said term of —— years hereinbefore limited to the said A. B. and C. D., their executors, administrators, and assigns as aforesaid, is so limited unto them upon this special trust and confidence, and to the intent and purpose that they the said A. B. and C. D., their executors, administrators, and assigns, shall and do, in case there shall be one or more child or children of the said E. F. by the said G. H., his intended wife, lawfully begotten (other than an eldest or only son), by sale or mortgage of the said term of —— years of and in the said premises so to them limited as aforesaid, or of and in a competent part thereof, or by such other ways or means as they, or the survivor of them, or the executors or administrators of such survivor, shall think fit, raise and levy the sum of £—— of lawful money of Great Britain for the portion or portions of all and every such child or children, not being an eldest or only son as aforesaid, to be equally divided between them, and paid at their respective ages of twenty-one years; and in case any of such children shall happen to die before his, her, or their portion or portions shall become payable as aforesaid, then the portion or portions of such of them so dying shall go and be paid unto and equally divided among the survivors or survivor of them, when the said original portion or portions of such surviving child or children shall become payable as aforesaid: Provided always, that in case all the same children shall happen to die before any of their portions shall become payable as aforesaid, Then and in such case the said sum of £—— so to be raised for their portions as aforesaid shall cease, and not be raised: Provided also, that no such sale or mortgage as aforesaid shall be made until some or one of the portions of the same children shall become payable as aforesaid: Provided always, and it is hereby further declared and agreed by and between the said parties to these presents, that in case there shall be no such child or children of the said E. F. by the said

G. H., his intended wife, lawfully begotten, (other than an eldest or only son), or, there being such child or children, all of them shall happen to die before their or any of their said portions shall become payable by virtue of these presents, Then and in every or any of the said cases, and at all times from thenceforth, the said term of ——years of and in the said premises shall cease, determine, and be void, to all intents and purposes, any thing herein contained to the contrary thereof in anywise notwithstanding.

Of a term for years for raising money, with a reference to another deed declaring the trusts, with a proviso for the surrender or assignment of the term on the performance of the trusts.

C. And it is hereby declared and agreed by and between all the parties to these presents, That the said messuages &c. hereby limited to the use of the said A. B. and C. D., their executors, administrators, and assigns, for the first-mentioned term of —— years, are limited to them upon trust that they the said A. B. and C. D., or the survivor of them, his executors or administrators, do and shall, as soon as conveniently may be after the decease of the said E. F., either by selling or mortgaging all or any part of the said messuages &c. comprised in the said first-mentioned term of —— years, for all or any part of the said term, or by, with, and out of the rents and profits of the same messuages &c., or by making entries thereon and taking the profits thereof, or by all and every or any one or more of the said ways and means, or by any other lawful and reasonable ways and means whatsoever, levy and raise the sum of £—— of lawful money of Great Britain; and in the meantime (*a*), till the death of the said E. F., do and shall, by and out of the rents and profits of the said messuages &c. comprised in the said first-mentioned term of —— years, levy and raise interest for the said first-mentioned sum of £——, from the day of the (*b*)

(*a*) Or,—

" until the raising and payment of the said sum of £——."

(*b*) Or,—

" decease of the said E. F."

date of these presents till payment thereof, at and after the rate of £—— per cent. per annum; And do and shall (*a*) stand and be possessed of the same sum of £——, and the interest thereof, upon such trusts, and for such ends, intents, and purposes, and under and subject to such provisoes, declarations, and agreements as are or shall be expressed and declared thereof in or by an indenture dated or to be dated on the day of the date of these presents, and made or to be made between &c.: Provided always, and it is hereby declared and agreed by and between the parties to these presents, that the said A. B. and C. D., or the survivor of them, his executors or administrators, shall not mortgage or sell all or any part of the said messuages &c. comprised in the said first-mentioned term of —— years, until the end of one year next after the decease of the said E. F., and that, subject to the (*b*) payment of interest at the rate aforesaid for the said first-mentioned sum of £——, all the rents and annual profits of the said messuages &c., comprised in the said first-mentioned term of —— years, or so much of the same rents and annual profits as from time to time shall remain after answering and paying the interest at the rate aforesaid, which from time to time shall become due for the said sum of £——, shall belong to and be received and taken by the person or persons who for the time being shall be entitled to the same messuages &c., in remainder or reversion immediately after and expectant on the determination of the same term, to and for his and their own use and benefit: Provided also, and it is hereby further declared and agreed by and

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(*a*) Or,—

"pay the said sum of £——, and the interest thereof, unto the said I. K., his executors, administrators, or assigns, or as he or they shall direct or appoint."

(*b*) Or,—

"raising and payment of the said sum of £——, and the interest thereof, in manner aforesaid, and the costs, charges, and expenses of carrying the trusts hereby reposed in the said A. B. and C. D., their executors, administrators, and assigns, into execution."

between all the parties to these presents, that when and as soon as all the trusts hereinbefore expressed and declared of and concerning the said first-mentioned term of —— years shall in all respects be fully performed and satisfied, [or become unnecessary], and the said A. B. and C. D., and each of them, their and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses, (if any), to be occasioned by or relating to the trusts hereby reposed in them as aforesaid, and which said costs, charges, and expenses the trustee or trustees for the time being of the said term is and are hereby authorized to raise and take by the means aforesaid), the said first-mentioned term of —— years, as to such and so many and such parts of the messuages &c. comprised therein as shall not be sold or mortgaged for the purposes aforesaid, shall be surrendered or otherwise, and at the option of the said E. F., his heirs or assigns, shall be assigned to attend the freehold, reversion, and inheritance of the lands and hereditaments comprised in the same term; and as to such and so many and such parts of the same messuages &c. as shall have been mortgaged for the purposes aforesaid, shall, subject to such mortgage or mortgages, attend, wait upon, and go along with the freehold and inheritance of the lands and hereditaments to be comprised in the same mortgage or mortgages respectively.

Of a term of years to raise a fund for payment of legacies, &c. to children, with interest to be applied in maintenance until twenty-one; with provision that portions of children attaining twenty-one, and dying in the lifetime of wife without issue, and of those living at her death and dying under age without issue, shall

CI. And I direct and declare that the said term of 500 years, hereinbefore limited To the use of the said A. B. and C. D., their executors, administrators, and assigns as aforesaid, is limited to them upon trust, and to the intent and purpose that the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, do and shall, by demise, sale, or mortgage of all or any part of the said messuage, lands, tenements, and hereditaments comprised in the said term of 500 years, for all or any part of the same term, or by, with, and out of the rents, issues, and profits of the same messuages, lands, tenements, and hereditaments, or any part thereof, in the mean time and until such sale, or by all or any of the ways and means aforesaid, as he or they in his or their discretion shall think fit,

cease to be a charge for the benefit of persons entitled to devised estates expectant on determination of term, and with clauses for benefit of survivors and their issue, being grandchildren, &c., and direction to pay surplus of rents to person next in reversion. (In wills).

raise and levy a competent sum or sums of money for payment of the several legacies or portions next hereinafter mentioned; that is to say, the sum of £—— for each and every of my children born and to be born who shall be living at my death, or born in due time afterwards, other than and except the child or children who for the time being and before he, she, or they shall attain the age of twenty-one years shall become seised of or entitled to the said devised estate, either for an estate of freehold in possession, or for an estate of freehold immediately expectant on the death of my said wife, and with interest for each of the same sums respectively, at the rate of £—— per cent. per annum, from the death of my said wife, and thenceforth, until the child to whom the said portion shall belong shall attain the age of twenty-one years, or receive his or her said portion; and the same interest, to be applied by the trustee or trustees for the time being in, for, or towards the maintenance, education, and advancement of each of the children respectively from whose portion the same shall arise: Provided always, in case all the children attaining the age of twenty-one years shall depart this life in the lifetime of my said wife, without leaving any issue of their bodies lawfully begotten living at her death, and all the children who shall be living at her death shall depart this life under that age without leaving issue lawfully begotten at any of their deaths, then the said portions or principal sums shall cease to be a charge for the benefit of the persons entitled to the said estates after and expectant on the determination of the said term of 500 years: Provided always, and in case any or either of my said children shall depart this life without leaving any issue of his, her, or their body or bodies lawfully begotten living at his, her, or their death or deaths, or such issue shall die under the age of twenty-one years and without leaving any issue of his, her, or their body or bodies lawfully begotten living at his, her, or their death or deaths, then the principal, and also any additional or any surviving portion of each of the children so dying, shall belong to and be held in trust for the other or others of the children entitled to portions as aforesaid, to be equally divided between them if more than one, share and share alike, as tenants in common and not as joint-

tenant: Provided further, and in case any child or children who shall depart this life in the lifetime of my said wife or afterwards and under the age of twenty-one years, shall leave any issue of his, her, or their body or bodies lawfully begotten living at the death of my said wife, or such child or children so dying under the age of twenty-one years shall survive my said wife, and in that event leaving any issue living at the death of the same child or children respectively, then the additional and also every accruing or surviving portion or share of each of the children so dying shall belong to and be held in trust for his or her child, if only one, or if more than one child who shall be living at the death of my said wife, or as the event or circumstances of the case shall require at the death of the parent of the same grandchild or grandchildren respectively, to be equally divided between the same grandchildren if more than one, share and share alike as tenants in common and not as joint-tenants, and with benefit of survivorship between the said grandchildren proceeding from one and the same parent; and if any one or more of the same grandchildren shall depart this life under the age of twenty-one years, and without leaving issue living at the time of their death or deaths, and if all the grandchildren proceeding from one and the same parent, and entitled as aforesaid, shall depart this life under the age of twenty-one years, and without leaving issue living at any of their deaths, the original and also any additional and surviving share of the same parent shall be held upon the same or the like trust, and limitations over, as if the same parent had departed this life under the age of twenty-one years without leaving any issue living at his or her death; the portion or share of each of the same children and grandchildren respectively to be payable and paid to him or her respectively when and as he or she respectively shall attain his or her age of twenty-one years, unless he or she shall attain that age in the lifetime of my said wife, and in that case to be payable and paid to him or her respectively on the death of my said wife, and at the rate aforesaid, to be payable and paid to each of the same children and grandchildren respectively, for his or her portion for the time

being, from and after the death of my said wife, so to be applied for his or her maintenance, education, and advancement pursuant to the directions hereinbefore contained: Provided always, and I declare and direct my said trustees and the survivor of them, and the executors or administrators of such survivor, do and shall permitand suffer the person or persons who for the time being shall be entitled to the reversion or remainder of the said premises comprised in the said term of 500 years, immediately expectant on the determination of the same term, to receive and take the rents and profits of the same premises, or the residue and overplus thereof which from time to time shall remain after answering and paying the said interest, at the rate aforesaid, when and as the same shall become due and payable.

Of real estate for testator's grandsons born in his lifetime, successively for life; remainder to their first and other sons in tail male; remainder to the use of testator's grandsons born after his death in tail male; remainder to testator's granddaughters, as to those born in his life for their lives, with remainders in tail, and as to those born after his death, in tail.

CII. In trust for the first and other sons of my said daughter lawfully begotten and to be begotten, which shall be born in my lifetime successively according to the priority of their births, for and during the term of their respective natural lives, and without impeachment of or for any manner of waste; and from and after the decease of each such son, In trust for the first, second, third, fourth, fifth, and all and every other son and sons of each such grandson respectively, and severally and successively in remainder, one after the other as the same grandsons (being the sons of each son respectively) shall be in seniority of age and priority of birth, and the several and respective heirs male of the body or several and respective bodies of the same grandson or grandsons respectively lawfully issuing, every elder of the same grandsons and his first and other sons, and the heirs male of his and their body and bodies of the same grandson and grandsons issuing, being always to be preferred to and take before any younger of the same grandsons and his first and other sons, and the heirs male issuing from the body and bodies of such younger grandsons; and on failure of such issue, In trust for the first, second, third, fourth, fifth, and all and every other son and sons of the said A. B., to be born after my death severally and successively in remainder one after another, as they respectively shall be in seniority of age and priority of birth, and the several

and respective heirs male of the body or several and respective bodies of my said last-mentioned grandson and grandsons respectively lawfully issuing, every eldest of the same grandsons, and the heirs male of his body issuing, being always to be preferred to and to take before the younger of the same grandsons and the heirs male of his body issuing; and on failure of such issue, In trust for the daughter (if only one), and if more than one, then all the daughters of the said A. B. lawfully begotten and to be begotten, to be equally divided between or among them if more than one, share and share alike as tenants in common and not as joint tenants, such granddaughters as shall be born in my lifetime, to be tenants for their respective lives, without impeachment of or for any manner of waste, with remainder after the death of each of them, as to her share, to her first and other sons respectively according to the priority of their births, in tail with remainders as to her share to her daughters as tenants in common, in tail with cross remainders between her daughters in tail, and such daughters as shall be born after my death to be tenants in tail of their respective shares, and cross remainders to be and be considered as limited between the same daughters and their descendants, so that on the death of each daughter, and the failure of her issue, whether such issue are to take by purchase or descent, the original and also any additional share of each of any granddaughters of whose issue there shall be such failure, may go and remain by way of cross remainders in the same or the like manner, and for the same or the like estates, as the same would have stood limited in case such granddaughter had not been born; And on the determination of all the estates hereinbefore limited to or for the benefit of the children and issue of the said A. B., then the said manor and other hereditaments situate at or in ——, in the county of ——, shall be held in trust for my said wife C. D., her heirs and assigns for ever.

Of real and personal estate for children equally, with cross

CIII. And it is hereby further directed, declared, and agreed, that the said A. B. and C. D., or other trustee or trustees for the time being, shall from and after the decease

remainders where there is no appointment.

of the survivor of them the said E. F. and G. H., his intended wife, stand and be seised of the said messuages &c., and also stand and be possessed of the said sum of £—— 3 per cent. Consolidated Bank Annuities, and the rents, dividends, interest, income, and produce thereof respectively; and after the decease of the survivor of them the said I. K. and L. his wife, and of the said E. F. and G. H. his intended wife, upon trust, to convey, pay, assign, or transfer the same respectively unto the child, if only one, and if more than one, then unto or between and amongst all the children of the said intended marriage between the said E. F. and G. H., to be divided between the same children if more than one, in equal shares and proportions as tenants in common and not as joint-tenants, and his, her, or their heirs, executors, administrators, and assigns, to be vested in the same children respectively when and as they respectively shall attain their respective ages of twenty-one years, or die under that age having issue living at their respective deaths; and in case any one or more of the said children of the said intended marriage shall depart this life under the age of twenty-one years without leaving any issue of his or their body or respective bodies living at his or their death or respective deaths, then in trust to convey, release, pay, assign, and transfer the original share or shares of the said messuages &c., and also of the said Bank Annuities, which under the trusts hereinbefore contained shall belong to the child or children respectively who shall die as aforesaid, and also that part or share or those several and respective parts or shares of and in the same messuages &c. and Bank Annuities which from time to time shall belong to or be taken by the same child or children respectively, so dying as aforesaid, under this present provision, unto the other, or if more than one, the others of the same children, to be equally divided between or amongst the same children if more than one, share and share alike as tenants in common and not as joint-tenants, and his, her, or their heirs, executors, administrators, and assigns, to be vested at the respective ages, days, or times hereinbefore appointed respecting the original share or shares of the same child or children; and in case there shall be no child of the said intended marriage, or no child

who shall attain the age of twenty-one years, or die under that age leaving issue living at his or her death, then upon this further trust, that they the said A. B. and C. D., or the other trustee or trustees for the time being, do and shall stand and be seised of the said messuages &c., with the appurtenances, upon trust to convey, release, and assign the same unto and to the use of the said F. W., his heirs and assigns for ever, and do and shall stand and be possessed of the said sum of £—— 3 per cent. Consolidated Bank Annuities, Upon trust to pay, assign, and transfer the same unto the said F. W., his executors, administrators, and assigns.

For daughters equally till marriage; upon marriage, to raise a sum as a portion; residue for unmarried daughters, with like trusts upon marriage, &c. Trust after decease of surviving unmarried daughter for testator's heir at-law, with power to trustees to reduce such portion, if more than the value of an aliquot part of the lands.

CIV. Upon trust during so long time as my daughters A. B., C. B., and E. B. shall remain unmarried, to permit them to receive the rents, issues, and profits thereof, to their own uses, in equal shares and proportions; And upon either of their marrying, upon trust to raise and levy, by sale or mortgage of a competent part thereof, the sum of £——, to be paid as a portion for the daughter so marrying, with interest at £5 per cent. from the time of her marriage; And upon this further trust, as to the residue of the said estates, to permit my remaining unmarried daughters to receive and take the rents, issues, and profits thereof to their own use, in equal shares and proportions, until another of them may be married, and then to raise and levy, by sale or mortgage as aforesaid, the like sum of £—— for such other daughter marrying, with interest as aforesaid; and so on for each daughter respectively marrying as aforesaid, to raise a similar sum of £——; and to admit of the residue of the rents, issues, and profits of the said lands being received from time to time by every the unmarried daughter or daughters, in equal shares if more than one, and if one only by her alone, the same to continue and be so received during the lives and life of the longest liver of them never having been married; And upon the death of the last unmarried daughter, upon trust as to the said lands, tenements, and hereditaments so devised to the said [*trustees*], and their heirs and assigns, or so much thereof as shall not be sold for the purpose of raising portions on the marriages of my respective daughters as aforesaid, upon trust, and to and for the uses

and behoof of the person or persons, his, her, or their heirs and assigns, who shall on the decease of such unmarried surviving daughter be my right heir or heiresses at law. Provided always, and in case at the marriage of any daughter the said sum of £—— should be more than an aliquot or equal part of the value of the lands then remaining unsold, after deducting the mortgage debts thereon, then and in that case the trustee or trustees for the time being shall have full power and authority to reduce the portion of such daughter to a sum which shall be equal to the value, after deducting a proportional part of the mortgage debts of that aliquot part of the lands remaining unsold, to the rents of which such daughter shall be entitled at her marriage.

For the benefit of an alien.

CV. Upon trust, that in case the said A. B. shall at any time hereafter obtain letters of denization, and thereby become a denizen of these realms, or shall be naturalised by or by means of an Act of Parliament to be obtained for that purpose, then and in either of the said cases, and upon the request and at the costs and charges of the said A. B., provided such request shall be made by him personally by writing under his hand and not otherwise, the said C. D., his heirs or assigns, do and shall convey and assure the said messuage &c., hereby granted and released, directed, limited, and appointed, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto or to the use of the said A. B., his heirs and assigns for ever, or to such uses, upon such trusts, and for such ends, intents, and purposes, as he or they shall express and declare of and concerning the same; and in the mean time do and shall stand and be seised of the same hereditaments, Upon trust for such person or persons, and for such ends, intents, and purposes, and under and subject to such powers of revocation and new appointment, and other powers, provisoes, declarations, and agreements, as the said E. B., as well when covert as sole, and notwithstanding her coverture by the said A. B. her husband, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of two or more credible witnesses,

and attested by the same witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, to be duly signed and published by her in the presence of three or more credible witnesses, and attested by the same witnesses, shall from time to time, with the consent in writing of the said A. B. during his life, and after his decease in her discretion, direct, limit, or appoint; and in default of such last-mentioned direction, limitation, or appointment, and in the mean time, and from time to time, until the same shall take effect, Upon trust that he the said C. D., his heirs or assigns, do and shall from time to time, during the joint natural lives of the said A. B. and E. his wife, permit and suffer, or authorize and empower the said E. B. and her assigns, to receive and take all the rents and profits of the said hereditaments for her own sole use, separate and apart from and exclusive of her said husband, and so and in such manner that the same may not be under his control, nor subject or liable to his debts, contracts, forfeitures, intermeddlings, or engagements, and so and in such manner that the receipts of the said E. B. or her assigns may be effectual discharges for the same rents and profits; and after the death of such one of them the said A. B. and E. his wife as shall first depart this life, then in trust for the said E. B., her heirs and assigns for ever.

For persons who would have been entitled to hereditaments if not sold, and the same had been settled in fee and not in tail, and their estates made determinable in event of death under twenty-one and without issue. (In wills).

CVI. In trust for such person and persons respectively as would by virtue of this my will, and the limitations hereinbefore contained, be entitled to the messuages, lands, tenements, and hereditaments which shall be sold and disposed of as aforesaid, and the rents and profits thereof in case no such sale or disposition had been made, and the said hereditaments had been settled on the first and other sons and on the daughters, or as the case shall require the children of my said daughter in fee instead of in tail, and such estates in fee of each child, instead of being determinable by the failure of his or her issue, had been made determinable by executory devise, in the event of his or her death under the age of twenty-one years without leaving any issue of his or

her body lawfully begotten living at his or her death, and for the benefit of the persons entitled next in remainder expectant on his or her estate, and do and shall pay, apply, and assign the same accordingly.

Of real estate for separate use of a married woman during her life. (In wills).

CVII. To the use of the said trustees and their heirs, for and during the natural life of A. B. the wife of C. B. of &c., without impeachment of waste, Upon trust that the said trustees and the survivor of them, and the heirs of such survivor, do and shall from time to time, during the natural life of the said A. B., retain and take the rents, issues, and profits of the said messuages &c. and stand and be possessed thereof for the use of the said A. B. and her assigns, for and during her natural life, separate and apart from and exclusive of her said husband, and so and in such manner that the same may not be under his control, or subject or liable to his debts, contracts, forfeitures, or engagements, and so and in such manner that the receipts of her the said A. B., or any person or persons to whom she may appoint the rents of the same hereditaments, may be good and effectual discharges for the money which shall be thereby expressed to be received; so nevertheless that the said A. B. shall not have the power to anticipate or assign the growing payments of the rents of the said hereditaments.

To present friend of testator to rectory upon first avoidance.

CVIII. Upon trust, that they the said A. B. and C. D., or the survivor of them, or the heirs of such survivor, shall and will, when such rectory shall become vacant by the death, resignation, cessation, or other avoidance of the Rev. E. F. the now present incumbent, in due form present to the proper ordinary or ordinaries my said friend the Rev. G. H., of &c. aforesaid, clerk, in order that he may be instituted and inducted in and to the said rectory; And I direct that my said trustees, and the survivor of them, and the heirs of such survivor, shall perform all such other lawful acts, deeds, matters, and things as shall or may be necessary on such occasion; And from and after, and subject to such presentation, institution, and induction, or in case of the death of the said G. H. in the lifetime of the said E. F., before he

the said G. H. shall be so presented, instituted, and inducted, or in case the said G. H. should decline to be so presented, instituted, or inducted, Upon the several trusts &c.

Of next presentation, viz. to present a particular person, or as he by deed or will shall appoint; in default, as his executor or administrator shall appoint.

CIX. Upon trust, that they &c. shall and do, on the death, resignation, or deprivation of the said A. B. the present incumbent of the said church, nominate the said C. D. to be instituted to the same, or such other person as he the said C. D., by any deed or writing under his hand and seal, or by his last will and testament in writing, or any writing in the nature of a will, or any codicil or codicils to be executed in the presence of two or more credible witnesses, shall direct, limit, or appoint; and in case of the death of the said C. D. before such presentation shall have been made, and without having executed such appointment, then such person as his executor or administrator shall direct or appoint for that purpose.

By reference of lands, and to contribute towards charges; and rents thereof until sale, to be applied to keep down interest of such charges, and surplus to be paid to persons entitled for time being. (In wills).

CX. To the same or the like uses, upon the same or the like trusts, and for the same or the like ends, intents, and purposes, and under and subject to the same or the like powers and provisoes as are hereinbefore limited, expressed, and declared of and concerning my manor and other hereditaments first hereinbefore devised, or as near thereto as may be, and as the deaths of parties and other contingencies will admit; so, nevertheless, that charges shall not be increased or multiplied, but such additional lands and hereditaments shall be contributory only towards the same charges; And further, that in the mean time and until such sale or sales respectively, the rents and profits of such of the hereditaments as from time to time shall remain unsold shall be applied in answering and keeping down the interest of the charges and incumbrances then remaining unpaid; and the surplus of the same rents and profits shall belong and be payable and paid to the person or persons who for the time being would be entitled to the possession or to the receipt of the rents of the hereditaments remaining unsold, in case the same hereditaments were or had been settled pursuant to the directions hereinbefore contained.

Of freehold and copyhold lands that the same may be considered as personal estate.

CXI. And it is hereby directed, declared, and agreed by and between the said A. B. and C. D., that the said freehold and copyhold messuages, lands, tenements, and hereditaments shall be held by the said A. B., his heirs and assigns; In trust (*a*) for the said C. D., his executors, administrators, and assigns, so that his interest therein may be as or in the nature of money or personal estate, and so that the same messuages, lands, tenements, and hereditaments may be disposed of from time to time as he, his executors, administrators, or assigns, shall from time to time direct or appoint, and for these purposes shall be liable to be sold at any time, on the request of the said C. D., his executors, administrators, or assigns; And upon no other trust, nor for any other end, intent, or purpose whatsoever.

Of copyholds by reference to trusts of freeholds.

CXII. To the use of the said A. B. and C. D., their heirs and assigns for ever, to be held of the lords of the said respective manors, by the rents and services therefore due, and of right accustomed; nevertheless upon such trusts, to and for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as, regard being had to the nature and quality of the same premises respectively, will best and nearest correspond with the uses, trusts, intents and purposes, powers, provisoes, agreements, and declarations hereinbefore limited, expressed, or declared, of or concerning the said messuages, lands, and other hereditaments hereinbefore granted and released, or expressed, or intended so to be.

(*a*) Or,

"In trust for the person or persons who at the time of such sale shall be entitled to the real estate so to be sold, and shall be or be deemed personal estate in the same person or persons respectively, but be subject to the same or the like limitations over as the same would have been subject to in case such annuities had been given to or vested in the same person or persons, instead of the said real estate, or as near thereto as may be, and the nature of the property will admit."

CXIII. To the use of the said A. B. and C. D., their heirs and assigns for ever, to be held by them upon and for such trusts, intents, and purposes as will correspond with the uses, charges, trusts, powers, intents, and purposes, which are hereby limited, expressed, and declared, touching and concerning the freehold lands and hereditaments of him the said E. F., hereby granted and released, or expressed or intended so to be, or as near thereto as the nature and quality of the tenure of the said copyhold premises, and the usage and customs of those manors will admit, To the intent that the said copyhold parcels of the said messuages, lands, and hereditaments may be charged or chargeable with the payment of the said annuity or yearly sum of £——, and with the other uses, trusts, powers, intents, and purposes hereinbefore expressed and declared of and concerning the said copyhold parcels of the said messuages, lands, and hereditaments hereinbefore particularly described; and that in the mean time and until &c. he the said E. F., and his heirs, shall and will stand possessed of and interested in the said copyhold or customary premises, with the appurtenances, In trust for the purposes aforesaid. Another form.

CXIV. And I give and devise all the copyhold and customary messuages, lands, tenements, and hereditaments, or parts or shares of messuages, lands, tenements, and hereditaments, with their rights, members, and appurtenances, in which I or any person or persons in trust for me have or hath any estate in possession, reversion, remainder, or expectancy, or any devisable interest or over which I have any power of disposition, unto the said A. B. and C. D., their heirs and assigns for ever, to be held by them upon and for such trusts, intents, and purposes as will correspond with the uses, charges, trusts, and powers, which are hereinbefore limited, expressed, and contained of and concerning my said freehold messuages, lands, tenements, and hereditaments, or as near thereto as the nature and quality of the tenure of the said copyhold premises, and the usage and customs of the manors of which the same are parcel will admit, to the intent that the same copyhold or customary hereditaments may go along with my said freehold es- Devise of copyholds to trustees, upon trusts by reference, to correspond with uses of freehold.

tates hereinbefore devised, and by way of and only be subject to the same charges and payments; and subject thereto to be held and enjoyed by the same persons and for the same estates, intents, and purposes, and in the same parts, shares, and proportions, and be subject in equity to the same or the like powers of leasing, selling, exchanging, and other powers and provisoes as my said freehold estates hereinbefore devised.

Of leaseholds for A. B. for life, he paying rents and performing covenants, &c.

CXV. Upon trust to permit and suffer the said A. B. and his assigns to hold and enjoy the said parsonage house and other leasehold premises, and receive and take the rents, issues, and profits thereof during his life, for his and their proper use and benefit, he and they from time to time during his life paying the rents and performing the covenants and agreements in and by the said indenture of the &c., reserved and contained on the part of the tenant, lessee, or assignee, to be paid, observed, and performed; and from and immediately after the decease of the said A. B., then &c.

Of leaseholds, to pay rents and perform covenants; and subject thereto, upon trusts to correspond with uses of freeholds; with a provision against leaseholds vesting absolutely in infant tenant in tail, until twenty-one.

CXVI. Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall in the first place, by and out of the rents, issues, and profits thereof, yearly and every year, and at all other times, duly pay, satisfy, and perform the several rents, reservations, covenants, and agreements, which are reserved and contained in the several indentures of lease, by which the same premises respectively are holden, reserved, and contained, on the part of the tenant or lessee to be observed and performed; and, subject to the aforesaid trusts, do and shall stand and be possessed of and interested in the said leasehold premises hereinbefore assigned, or expressed and intended so to be, upon such trusts, to and for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as will best and nearest correspond with the uses, trusts, intents, and purposes, powers, provisoes, agreements, and declarations hereinbefore expressed or declared of or concerning the messuages, lands, and other

hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, so that the same leasehold estates and premises may from time to time, so far as the rules of law and equity, and the different natures and tenures of the same premises respectively, will admit of, be In trust for the person or persons who shall for the time being be entitled to the possession or to the receipt of the rents, issues, and profits of the messuages, lands, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, by virtue of the limitations hereinbefore contained; yet so that the said leasehold estates and premises hereinbefore assigned, or expressed and intended so to be, shall not vest absolutely, in any child or children of the said E. F. by the said G. H., his intended wife, unless such child or children shall live to attain the age of twenty-one years; But nevertheless such child or children so for the time being entitled as aforesaid shall, after the decease of the survivor of his said parents, and during such suspense of absolute vesting as aforesaid, be entitled to the rents, issues, and profits of the same estates for his or their own proper use and benefit.

Of renewed lease by reference to trusts of former leases.

CXVII. And it is hereby agreed and declared between and by the said parties to these presents, that they the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, shall stand and be seised of all the premises in every such renewed lease to be comprised for and during their and his estate and interest therein, by virtue of or under such renewed lease, Upon such trusts, and with, under, and subject to such powers and provisoes as are hereinbefore expressed or declared of or concerning the said leasehold premises, so far as the deaths of persons and other circumstances will permit.

Of policies by reference to trusts of stock.

CXVIII. And it is hereby further agreed and declared, that the said A. B., C. D., and E. F., and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of and interested in the said policies of assurance, and of and in

all and singular the sum and sums of money to grow due and payable and to be received in respect thereof, Upon such and the same trusts, and to and for such and the same ends, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and agreements as are hereinbefore declared of and concerning the said sum of £——.

Of personal property, to correspond with limitations of real estate (*a*).

CXIX. And after the death of the survivor of the said A. B. and C. D., do and shall stand and be possessed of the said sum of £——, and the stocks, funds, and securities, in or upon which the same shall be invested, and of the dividends, interest, and income thereof arising after the death of the survivor of the said A. B. and C. D., in trust for the first or only son of the said intended marriage of the said

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(*a*) "It frequently happens, that, where a real estate is limited in strict settlement, and a leasehold for years or other personal estate is intended to be settled upon corresponding trusts, the settlement is made by assigning the leasehold estate to trustees, and declaring they shall stand possessed of it upon such trusts as are previously declared of the real estate, or as near thereto as may be, or as the rules of law and equity will permit. This should never be done. The nature of real and personal estate is so different, as to make it almost impracticable to frame such a set of trusts as will, in every possible event, or even in the common contingencies, carry the personal estate in the same course of devolution as the real estate; and the modes of doing it are so various, that hardly two professional men would agree upon the same plan. The best method, therefore, is, to insert a complete set of limitations for the personal estate. If, however, from the smallness of the property, it is thought advisable to do it by way of reference to the limitations of the real estate, a declaration may be inserted, expressing that the leasehold or personal estate shall not vest absolutely in any child or children of any tenant for life, unless or until he, she, or they shall attain the age of twenty-one years; provided, however, that such child for the time being may during his minority be entitled to the rents and interest. The nature of leasehold for lives is much more analogous to that of estates of inheritance; and therefore, generally speaking, may be settled by reference to previous limitations of the fee-simple estate. The short mode of reference may be used in the power of sale usually inserted in settlements, where the parties are authorized by it to purchase leaseholds for years. See *Foley* v. *Burrell*, 1 Bro. C. C. 274; *Duke of Newcastle* v. *Lady Lincoln*, 3 Ves. jun. 387." Butler's Co. Litt. 290. b, note, sect. x.

A. B. and C. D., his executors, administrators, and assigns; and if such first son shall depart this life in the lifetime of both or either of them the said A. B. and C. D., without leaving any issue of his body lawfully begotten living at the death of the survivor of the said A. B. and C. D., or if such son shall survive the said A. B., and also the said C. D., and shall afterwards depart this life under the age of twenty-one years, and without leaving any issue of his body lawfully begotten living at his death, Then in trust for the second, third, fourth, fifth, and all and every other son and sons of the said intended marriage of the said A. B. and C. D., severally and successively, in order and course one after the other as they respectively shall be in seniority of age and priority of birth, and their several and respective executors, administrators, and assigns, every elder of such sons to be preferred before every younger of the same sons, yet, nevertheless, so that the interest of each and every son who shall depart this life in the lifetime of both or either of them the said A. B. and C. D., without leaving any issue of his body lawfully begotten living at the death of the survivor of the said A. B. and C. D., or who shall survive the said A. B. and also the said C. D., and shall afterwards depart this life under the age of twenty-one years, without leaving any issue of his body lawfully begotten living at his death, may determine in favour of his next brother, his executors, administrators, and assigns, To the intent and so that the same stocks, funds, and securities, dividends, interest, and income may be taken and enjoyed by each son in succession, according to his seniority, in case his elder brother shall depart this life in the lifetime of both or either of them the said A. B. and C. D., without leaving any issue of his body lawfully begotten living at the death of the survivor of the said A. B. and C. D., or having survived the said A. B. and also the said C. D., shall afterwards depart this life under the age of twenty-one years, without leaving any issue of his body lawfully begotten living at his death; And in case there shall be no son of the said intended marriage, or no son who shall be living at the death of the survivor of the said A. B. and C. D., or shall leave issue of his body lawfully begotten living at the death of the survivor of the said A. B. and

C. D., or if the son or all the sons who shall be living at the death of the survivor of the said A. B. and C. D. shall afterwards depart this life under the age of twenty-one years, and no issue of any such son shall be living at his death, Then in trust for the daughter if only one, and if more than one, then all the daughters of the said intended marriage between the said A. B. and C. D., to be equally divided between such daughters if more than one, share and share alike, as tenants in common and not as joint tenants, and her or their executors, administrators, and assigns; And if any one or more of the said daughters (in case there shall be more than one) shall depart this life in the lifetime of both or either of them the said A. B. and C. D., without leaving any issue of her or their body or respective bodies, lawfully begotten, living at the death of the survivor of the said A. B. and C. D.; or in case any one or more of the said daughters who shall be living at the death of the survivor of the said A. B. and C. D. shall afterwards depart this life under the age of twenty-one years, and without leaving any issue of her or their body or respective bodies, lawfully begotten, living at her or their death or several deaths; Then as to and concerning the original share or shares of and in the said sum of £——, and the stocks, funds, and securities in and upon which that sum shall from time to time be invested, and of the dividends, interest, and income thereof which shall belong to the daughter or daughters respectively so dying, and also as to the share or shares of and in the same trust monies, stocks, funds, and securities, dividends, interest, and income which the same daughter or daughters respectively shall take under and by virtue of this present provision, In trust for the other, or, if more than one, the others of the same daughters, to be equally divided between them if more than one, share and share alike, and her and their executors, administrators, and assigns, or several and respective executors, administrators, and assigns.

Of leasehold (by reference), corresponding with trusts of freehold lands in strict settlement.

CXX. Nevertheless in trust for the said A. B., his executors, administrators, and assigns, in the meantime and until the solemnization of the said intended marriage; and after the solemnization thereof, Upon trust, and to the end,

intent, and purpose that the same messuages, lands, tenements, and premises may go along with the freehold hereditaments hereby released or otherwise assured, or intended so to be, and by way of aid only, and only if wanted for the purpose, after the said freehold and copyhold hereditaments shall have been applied for that purpose, be subject to the same charges and payments; and subject and without prejudice to such charge, to be held and enjoyed by the same persons, and for the same uses, intents, and purposes, and be subject to the same or the like powers of leasing, selling, exchanging, and other powers, provisoes, and agreements, uses, trusts, and limitations as are hereinbefore limited, expressed, and declared of and concerning the said freehold hereditaments, or as near thereto as may be, and the nature or tenure of the property, and the rules of equity, will permit; Yet nevertheless so that the said messuages, lands, tenements, and premises of a leasehold tenure, or held for a chattel interest, shall not vest absolutely in any person or persons to be tenant or tenants in tail of the said freehold hereditaments under this settlement, unless such person or persons respectively shall attain the age of twenty-one years, or die under that age, leaving issue living at his or their death or respective deaths, but as far as the rules of law and equity will admit, shall belong to the person or persons to whom the same, if lands of inheritance and hereby settled as such, would in that event have belonged, descended, devolved, or remained.

Of leasehold and personal property corresponding with uses of real estate in strict settlement. (In wills).

CXXI. Upon trust that the same leasehold messuages &c., household goods &c., may go along with the said freehold manors &c. hereinbefore devised, and be held and enjoyed, and the rents of the said leasehold messuages, lands, tenements, &c. received and taken by the same persons, and applied to the same uses, and subject as to the leasehold estates to the same or the like powers of leasing, and subject as to all the said property, including leasehold estates, to all other powers, provisoes, agreements, uses, trusts, charges, and limitations as are hereinbefore and hereinafter limited, expressed, and declared concerning the said manors &c., or as near thereto as may be, and the

nature or tenure of the property, and the rules of equity, will permit; Yet nevertheless so that the same shall not vest absolutely in any person or persons, being tenant or tenants in tail under this my will, unless he, she, or they respectively shall attain the age of twenty-one years, but, as far as the rules of law and equity will admit, shall belong to the person or persons to whom the same, if lands of inheritance and hereby settled as such, would in that event have belonged, descended, devolved, or remained.

Of leasehold (by reference), to correspond with trusts of freeholds. (In wills).

CXXII. Upon such trusts, and for such intents and purposes, and with, under, and subject to such powers, provisoes, and declarations as, allowing for the different natures of the estates, will best and nearest correspond with the uses, trusts, intents, and purposes, powers, provisoes, and declarations hereinbefore by me declared of the fee-simple estates hereinbefore by me devised, so that the same may go along and be enjoyed with the said fee-simple estates, so far as the rules of law and equity, and the different tenures of the estates, will admit of; Yet so that the same leasehold manors, lands, and other hereditaments, shall not, for the effect of transmission, vest absolutely in any person hereby made tenant in tail of my said fee-simple estates, unless and until such person shall attain the age of twenty-one years, or depart this life under that age, leaving lawful issue of his body, entitled under the limitations hereinbefore contained to the said fee-simple estates, living at the time of his decease, or born in due time afterwards, but nevertheless such person to be entitled to the rents, issues, and profits thereof during such suspense of absolute vesting.

Trusts for persons answering the description of heir-at-law. (In wills).

CXXIII. In trust for and for the benefit of the person or persons who, on the determination or failure of the several estates hereby limited to the said A. B. and C. D. respectively, shall be the heir or co-heirs of the said E. F., and his, her, or their heirs, executors, administrators, and assigns; and if there shall be several persons who shall be co-heirs, they shall take as tenants in common and not as joint tenants, and in the same shares and proportions,

either equally or unequally, as they would have been entitled to a real estate descending from me, and vesting in them at that time as my co-heirs (*a*).

CXXIV. And I declare that in the leasehold estates and in the heir looms the ultimate trust, instead of being to my right heirs, shall be for the person or persons who at my death shall answer the description of being my right heir, and that the principle shall extend as well to leasehold estates to be purchased or acquired after my death, as to estates belonging to me at my death.

Another form. (In wills).

CXXV. Upon trust that they the said A. B. and C. D., and the survivors of them, and the executors, administrators, and assigns of such survivor, do and shall pay, transfer, and assign the said [*personal property*] unto the person or persons who at the decease of the said A. B. shall be her heir or co-heirs at law, as and for his, her, or their own absolute property; and if there shall be co-heirs, then do and shall divide the same between them as tenants in common and not as joint tenants, and in the same shares and proportions (either equally or unequally) as they would be entitled to a real estate descending from the said A. B., and vesting in them at her death by descent as her co-heirs.

Of personal property for persons who would be entitled as heirs of real estate.

CXXVI. Upon trust that they the said A. B. and C. D., and the survivor of them, his executors and administrators, do and shall insure, and from time to time keep insured, the said messuages &c., in the sum of £——, against loss or damage by fire; and do and shall from time to time apply the money which shall be received by him or them by virtue of such insurance, in rebuilding or repairing such part or parts of the said premises respectively as shall have been destroyed or damaged by fire; and do and shall from time to time, with the consent in writing of the said E. F. and G. H., or the survivor of them, and after the death of such

Of leaseholds—1st, to insure; 2nd, to apply insurance money; 3rd, to lease at improved rents; 4th, to pay ground rents; 5th, as to the residue of the rents for the separate use of intended wife during the lives of the husband and wife; 6th, for wife for life; 7th, husband for life.

(*a*) For Form of Uses to the same purpose, vide Tit. vi. art. 50.

survivor, then in the discretion of the said A. B. and C. D., or the survivor of them, his executors or administrators, lease all or any part of the said premises at rack or improved rents, either from year to year or for any term or number of years not exceeding twenty-one years; and do and shall from time to time, by and out of the rents and income of the said premises respectively, discharge the said ground-rents of £—— and £—— which shall become due for the same premises, and also the sum and sums of money which shall be paid for the insurance of the same premises against loss or damage by fire; and do and shall from time to time, during the joint lives of the said E. F. and G. H., retain and take all the residue and surplus of the said rents and income of the said premises, and stand and be possessed thereof, Upon trust for the sole use of the said G. H. separate and apart from and exclusive of the said E. F. her intended husband, and so and in such manner that the same may not be under his control, or subject or liable to his debts, contracts, forfeitures, or engagements, and so and in such manner that the receipts of the said G. H., or any person or persons to whom she may appoint the same, may be good and effectual discharges for the money which shall be thereby expressed to have been received; yet nevertheless so that the said G. H. may not anticipate, charge, or assign all or any part of the same rents and income before the same shall become due and payable; And upon this further trust, that if the said E. F. shall die in the lifetime of the said G. H., then the said A. B. and C. D., and the survivor of them, his executors and administrators, do and shall permit and suffer the said G. H. and her assigns to receive and take all the residue or surplus of the said rents and income during her life; And upon this further trust, that in case the said G. H. shall die in the lifetime of the said E. F., then the said A. B. and C. D. and the survivor of them, his executors and administrators, do and shall permit and suffer the said E. F. and his assigns to receive and take the surplus of the said rents and income during his life.

Of leasehold for children, with

CXXVII. In trust for the child if only one, and if more

than one, all the children of the said intended marriage between the said A. B. and C. D., to be equally divided between them if more than one, share and share alike, as tenants in common and not as joint tenants, and the executors and administrators of the same child or children respectively for all the residue of the terms or other interests therein respectively; And in case any one or more of the said children, being a son or sons, shall die under the age of twenty-one years, or, being a daughter or daughters, shall die under that age, and also before she or they respectively shall have been married, then as to the original share or shares of and in the said premises respectively which shall belong to the same child or children respectively so dying as aforesaid, and also as to the share or shares of the same premises which from time to time shall be taken by the same child or children respectively under this present limitation, by way or in the nature of cross remainders, In trust for the other or others of the same children, equally to be divided between them, if more than one, as tenants in common and not as joint tenants, and his, her, or their executors and administrators, for all the residue of the said terms or other interests therein respectively; And in case there shall not be any child of the said intended marriage, or no child who, being a son, shall attain the age of twenty-one years, or, dying under that age, leave issue of his body lawfully begotten living at his death, or who, being a daughter, shall attain that age or be married, then upon trust &c.

Cross limitations between them.

CXXVIII. Upon trust that they the said A. B., C. D., and E. F., and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall receive and take the rents, issues, profits, and produce of the said rectory &c. comprised in the said recited indenture of lease, from time to time, as the same shall become due and payable, and do and shall thereout, in the first place, pay the yearly rents thereby reserved, and in the next place pay and satisfy the interest for the said sum of £——; and, after payment thereof, do and shall, by, with, and out of the said yearly rents, issues, and profits, from time to time, yearly and every year, during the continuance

To receive produce, pay rents and interest of a sum of money, and retain an annuity upon certain trusts. (In a marriage settlement of leaseholds).

of the trusts hereinafter declared concerning the same premises, and of the present or any renewed lease or leases thereof, set apart and retain the annual or yearly sum of £——, to commence from the day of the solemnization of the said intended marriage; And do and shall stand possessed of and interested in the said annual or yearly sum of £——, upon the trusts, and for the intents and purposes, hereinafter mentioned and declared of and concerning the same.

Of rents and dividends of real estate and funded property equally among unmarried daughters, and to only unmarried daughter if but one, till death or marriage, with trust for maintenance of unmarried daughters: After death and marriage of all daughters among children and issue of deceased children equally, per stirpes, and after distribution, share of son dying under twenty-one without issue to go to other children. (In wills).

CXXIX. And I direct that my said trustees, and the survivors and survivor of them, and the heirs, executors, or administrators of such survivor, shall stand and be seised of the said messuage &c. and real estate, and possessed of the stocks, funds, and securities in which the said residue of my personal estate shall be invested, Upon trust that my said trustee or trustees for the time being shall, during the lives and life of such one or more of my daughters, A. B., C. B., and E. B., as from time to time shall be living without having been married, pay the rents and profits, interest, dividends, and income of the said real estates, stocks, funds, and securities, to all such and so many (being one or more) of my said daughters, as for the time being and from time to time shall be living without having been married, to be equally divided between them if more than one, share and share alike, and if only one then to that one daughter, till she or they respectively shall be married or, which shall first happen, shall depart this life; and do and shall, during the minority of each of my said daughters for the time being entitled to a share or shares of and in the said rents and profits, interest, dividends, and income, apply the whole or any part of her share in or towards her maintenance and education, in such manner as my said trustee or trustees shall, in his or her discretion, think proper; and do and shall, when and so soon as each of my said daughters shall have either departed this life or have been married, convey, assign, and transfer the said messuage &c. and real estate, and the stocks, funds, and securities wherein the said residue of my personal estate shall be invested, unto and amongst such of my children, A. B. &c., as shall be then living, and

the issue of such of my said children as shall be dead leaving issue living at the time appointed for such division and distribution as aforesaid, and their respective heirs, executors, administrators, and assigns; such children and issue to take per stirpes and not per capita, if the circumstances shall so require, and such respective issue to take, if more than one, equally between them the share only which his, her, or their parent or respective parents would have taken if then living: Provided always, and I do hereby declare my mind and will to be, in case, at any time after such division and distribution as aforesaid shall or ought to be made, each or either of my said sons shall depart this life under the age of twenty-one years, and without leaving issue living at his death, then the original and also any accruing shares of each of my said sons so dying, or so much thereof as shall not have been first applied for his benefit, in manner hereinafter mentioned, shall be held and be applied in like manner, and upon the like trusts, as if no share had vested in him.

To pay an annuity to intended wife for life out of rents of settled lands, with various other trusts as to residue of rents, and as to all the same rents after wife's decease, in favour of husband and issue and another.

CXXX. To the use of the said A. B. and C. D., and their heirs, during the natural life of the said P. P. [*cestui que vie*]; Upon the trusts nevertheless, and for the ends, intents, and purposes hereinafter expressed and declared of and concerning the same, (that is to say); In trust from time to time, yearly and every year during the joint lives of the said E. F. and G. H. [*intended husband and wife*], to retain and take the sum of £—— of lawful money of Great Britain, by and out of the rents, issues, and profits of the same messuages &c., by half-yearly payments on the —— day of —— and the —— day of——, and to stand and be possessed of the said yearly sum of £——, Upon trust for the said G. H., separate and apart from and exclusive of her said intended husband, and so and in such manner that the same may not be under his control, or subject or liable to his debts, contracts, forfeitures, or engagements, and so and in such manner that the receipts of the said G. H., or any person or persons to whom she may appoint the same or the half-yearly payments thereof, when or after the same shall be due, may be good and effectual discharges for the money which shall be thereby

expressed to be received; Yet nevertheless so that the said G. H. may not anticipate, charge, or assign all or any part of the same annual sum of £——, or the half-yearly payments thereof, until the same half-yearly payments shall become due and payable; And upon further trust to pay to the said E. F. and his assigns, or permit and suffer, authorize or empower, him and them from time to time during the joint lives of the said E. F. and G. H. his intended wife, and P. P. [*cestui que vie*], to receive and take the residue of the rents, issues, and profits of the same messuages &c.; and after the death of the said G. H. in case the said E. F. shall survive her, and thenceforth from time to time during the joint lives of the said E. F. and P. P. [*husband and cestui que vie*], to permit and suffer the said E. F. and his assigns to receive and take all the same rents, issues, and profits; And upon further trust, immediately from and after the decease of the said E. F., and thenceforth during the life of the said P. P., or so much thereof as there shall be any issue of the said intended marriage, to pay the rents, issues, and profits of the same messuages &c. to the person or persons who for the time being would be entitled to the same rents, issues, and profits as the heir or heirs of the body of the said E. F. by the said G. H. his intended wife, in case the said rents, issues, and profits were payable or receivable in right of an estate tail limited to the said E. F., and the heirs of his body by the said G. H. his intended wife, and in such parts, shares, and proportions as the same person or persons would be entitled to the same rents, issues, and profits as such heir or heirs of the said E. F. by the said G. H. his wife, or otherwise to permit and suffer, authorize or empower, the same person or persons to receive and take the same rents, issues, and profits, in such proportions as aforesaid; subject nevertheless to the payment of the said annuity of £—— to the said G. H., during the continuance of that annuity, in case the same shall not have been previously determined; And in case there shall be no such issue living at the death of the said E. F., or in case there shall be such issue living at his death, and a failure of the same afterwards, and in the lifetime of the said F. F. [*father*], then from and

after, and thenceforth during, the life of the said P. P., In trust, to pay unto the said P. P. and his assigns, or permit and suffer, or authorize and empower, him and them to receive and take the same rents, issues, and profits; subject nevertheless to the payment of the said annuity of £—— to the said G. H. during the continuance thereof, in case the same annuity shall not have been previously determined.

To vary securities.

CXXXI. It is hereby agreed and declared between and by the said parties to these presents, that the said A. B. and C. D., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £——, so transferred to them the said A. B. and C. D. as hereinbefore is mentioned and recited, and of and in the interest, dividends, and annual produce thereof, upon the trusts, and to and for the intents and purposes hereinafter expressed or declared of or concerning the same; (that is to say,) In trust for the said E. F., her executors, administrators, and assigns, in the meantime, and until the said intended marriage shall be actually had and solemnized; and from and immediately after the solemnization thereof, Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall either permit and suffer the said sum of £—— to remain in its present actual state of investment, or do and shall, with the consent in writing of the said G. H. and E. F. his intended wife, during their joint lives, and after the decease of such of them as shall first depart this life, with the consent in writing of the survivor of them, during his or her life, and after the decease of such survivor, at the discretion of the said trustees or trustee for the time being, sell, transfer, or convert into money the same, or any part thereof; and with such consent or at such discretion as aforesaid lay out and invest the money thereby to be produced in their or his names or name in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales (*a*); And do and shall

(*a*) If it be the intention of the parties to restrain the trustees from

from time to time, with such consent or at such discretion as aforesaid, alter the said stocks, funds, and securities as to them or him shall seem proper; And do and shall stand and be possessed of or interested in the said sum of £——, and the interest, dividends, and annual produce thereof, and all and singular other the trust monies, stocks, funds, and securities which may arise or be produced by or from any such sale, transfer, disposition, investment, alteration, variation, or transposition as aforesaid, and the interests, dividends, and annual produce thereof, Upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or declared and contained of or concerning the same; (that is to say), Upon trust, that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall &c.

Of life interest in stock for the separate use of a woman, with a clause against anticipation.

CXXXII. Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall, during the life of E. F., pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, as and when the same shall be received unto such person or persons, and for such intents and purposes as the said E. F. shall from time to time, by writing under her hand, direct or appoint, but not so as to dispose of or affect the same by sale, mortgage, charge, or otherwise in the way of anticipation; And in default of such direction or appointment, into her own hands, for her own sole, separate, and particular use, exclusively of any husband with whom she may intermarry, and without being in anywise subject or liable to his debts, controul, interference, or engagements; And the receipts in writing of the said E. F., and her appointees, (whether she shall be single or married), to be sufficient discharges for the same.

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making any investments on securities in *Ireland*, such intention should be expressly declared. Stat. 4 & 5 Will. 4, c. 29, s. 5; and see Vol. i. book iii. chap. ii. The following words will be sufficient:—

"But not upon real securities in Ireland."

CXXXIII. And from and after the decease of the said E. F., In trust as to the principal of the said trust monies, for all and every the child and children of the said E. F., by the said G. H., now born, or hereafter to be born, who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain the age of twenty-one years, or marry, which shall first happen, to be equally divided between and among such children, if more than one, in equal shares and proportions, as tenants in common; and if there shall be but one such child, then the whole to be in trust for that one child; and after the decease of the said E. F., and until the whole of the said trust monies, stocks, funds, and securities shall become vested in such child or children as aforesaid, do and shall pay and apply the interest, dividends, and annual produce thereof, or of the unvested part thereof, as the case may be, unto and for the benefit of all and every the children or child, for the time being, of the said E. F., whose portions or portion shall not then be vested for and towards their, his, or her maintenance and benefit, equally between and among them, if more than one. Provided always, that it shall and may be lawful to and for the said trustees or trustee for the time being of these presents, during the life of the said E. F., with her consent in writing, and after her decease at their or his discretion, to raise and apply any part not exceeding one moiety of the then expectant portion or portions of any child or children for whom portions are intended to be hereby provided, and whose portions shall not then be payable under the trusts aforesaid, for their or his or her preferment, advantage, or benefit. And it is hereby agreed and declared between and by the said parties to these presents, that if there shall be no child of the said E. F. by the said G. H. who shall, under or by virtue of these presents, become entitled to an absolute interest in the said trust monies, the same shall, subject and without prejudice to the trusts thereof hereinbefore declared, be in trust for the said G. H., his executors, administrators, and assigns.

After decease of parent, in trust as to the principal for the children of the marriage; if more than one, as tenants in common; and if but one child, then in trust for such only child, with trusts for maintenance and advancement. In default of children, in trust for husband.

CXXXIV. And from and immediately after the decease of such survivor, if there shall be any child or children of the said

For younger children, as husband and wife

or the survivor shall appoint.

A. B. by the said C. D., his intended wife, other than and besides an eldest or only son, for the time being, under or by virtue of the limitations contained in the said indenture of release, of even date with these presents, entitled in possession, or in remainder expectant upon the decease of the said A. B., to the manors and other hereditaments therein comprised, or to the receipt of the rents, issues, and profits thereof, Upon trust, that they the said E. F. and G. H., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, In trust for all and every, or such one or more exclusively of the others or other of the child or children of the said A. B. by the said C. D., his intended wife, (other than and besides an eldest or only son for the time being entitled as aforesaid), or In trust for all and every or such one or more exclusively of the others or other of the issue born in the lifetime of the said A. B. and C. D., his intended wife, or the survivor of them, of any such child or children, or both, In trust for all and every or such one or more exclusively of the others or other of such child or children, and all and every or such one or more exclusively of the other or others of such issue born as aforesaid of any such child or children, and if more than one in such shares and proportions, at such age or time, or respective ages or times, (not happening after the expiration of twenty-one years, to be computed from the decease of the survivor of them the said A. B. and C. D.), and charged with the payment of such annual sum and sums of money to such child or children and issue, or any of them, and with such benefit of survivorship and accruer, and such limitations over, between or amongst them, or any of them, upon such conditions, with such provisions for their or any of their maintenance and education, in such shares and proportions, and generally in such manner for their or any of their benefit as the said A. B. and C. D., his intended wife, shall at any time or times during their joint lives, by any deed or deeds, writing or writings with or without power of revocation, to be by them sealed and delivered in the presence of and attested by two or more

credible witnesses, from time to time jointly direct or appoint: And in default of such joint direction or appointment, and so far as every or any such joint direction or appointment shall not extend, then as the survivor of them the said A. B. and C. D., his said intended wife, shall, at any time or times after the decease of the other of them, by any deed or deeds, writing or writings, with or without power of revocation, to be by him or her sealed and delivered in the presence of, and to be attested by two or more credible witnesses; or by his or her last will and testament in writing, or any codicil or codicils thereto, to be by him or her signed and published in the presence of, and to be attested by the like number of credible witnesses, from time to time direct or appoint; And in default of such direction or appointment, and so far as every or any such direction or appointment shall not extend, In trust for the child or all the children (as the case may be) of the said A. B. by the said C. D., his intended wife, (other than and except an eldest or only son for the time being entitled as aforesaid), and if more than one, to be divided between or amongst them, in equal shares and proportions, and to be an interest vested or interests vested in such child or children respectively, being a son or sons, at his or their age or respective ages of twenty-one years, and being a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen; and to be paid, transferred, or assigned to him, her, or them respectively, his, her, or their respective executors, administrators, or assigns, on or at the same age, day, or time, or respective ages, days, or times respectively, if the same respectively shall happen after the decease of the survivor of them the said A. B. and C. D., his intended wife; but if the same shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such survivor. Provided always nevertheless, that it shall be lawful for the said A. B. and C. D., his intended wife, at any time or times during their joint lives, by any deed or deeds, writing or writings, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, to direct that the said trust monies, stocks, funds,

In default of appointment, in trust for younger children as tenants in common, to be vested as to sons at twenty-one, and as to daughters at twenty-one or time of marriage.

Husband and wife empowered to direct trust monies to be at once transferred to the person entitled to a vested interest.

and securities, or any part or parts, share or shares thereof, shall be paid, transferred, or assigned to any child or children or issue, who, by virtue of or under the powers, authorities, or trusts hereinbefore contained, shall have become entitled to a vested interest or vested interests therein respectively, his, her, or their executors, administrators, or assigns; And the said E. F. and G. H., and the survivor of them, and the executors, administrators, and assigns of such survivor, shall accordingly pay, transfer, and assign the same, notwithstanding the respective interests therein of the said A. B. and C. D., his intended wife. Provided always, and it is hereby agreed and declared, that no child who shall take any part or share of the said trust monies, stocks, funds, or securities, under or by virtue of any direction or appointment to be made by the said A. B. and C. D., his intended wife, or the survivor of them, in pursuance of the powers or authorities hereinbefore contained, or either of them, shall have or be entitled to any further or other share of and in that part of the said trust monies, stocks, funds, and securities, of which no such direction or appointment shall have been made, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly. Provided always, and it is hereby agreed and declared, that, if there shall be more than one child for whom portions are intended to be hereby provided as aforesaid, and any one or more of them, being a son or sons, shall depart this life, or become an eldest or only son for the time being entitled as aforesaid, under the age of twenty-one years, or being a daughter or daughters shall depart this life under the age of twenty-one years without being or having been married, then, in case no such direction or appointment as aforesaid shall be made by the said A. B. and C. D., his intended wife, or the survivor of them to the contrary, as well the original share hereby provided for, as the share or shares by virtue of this present clause surviving or accruing to every such child respectively, or so much thereof as shall not have been raised or applied for his or her respective advancement in the world, in pursuance of the direction hereinafter contained, shall from time to time go and be in trust for the survivors or survivor, or others or other of such children, and, as far as cir-

Hotchpot clause.

Benefit of survivorship between the children.

cumstances will admit, shall vest in and be paid, transferred, or assigned to him, her, or them, (and if more than one, in equal shares and proportions), at the same time or times, and in the same manner as hereinbefore is declared concerning his, her, and their original share or shares of and in the said trust monies, stocks, funds, and securities, and the interests, dividends, and annual produce thereof.

In default of children or issue entitled by virtue of trusts before contained, in trust, after decease of survivor of husband and wife, for such son as shall first or alone attain twenty-one; in default, and if wife survive her husband, for her absolutely; but if husband survive wife, then as to one moiety, in trust for husband; and as to the other moiety, upon such trusts as wife shall by deed or will appoint; and in default, in trust for her next of kin.

CXXXV. And it is hereby further agreed and declared between and by the said parties to these presents, That if there shall be no child of the said E. F. by the said G. H. his intended wife, or the issue of any such child who, by virtue of the trusts hereinbefore contained, shall become entitled to the said trust monies, stocks, funds, and securities, Then the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, In trust after the decease of the survivor of them the said E. F. and G. H., his intended wife, and such default or failure of children and issue as aforesaid, for such son of the said E. F. by the said G. H. his intended wife, as shall first or alone attain the age of twenty-one years, his executors, administrators, and assigns, for his and their proper use and benefit; and if there shall be no such son, and the said G. H. shall survive the said E. F., her intended husband, In trust after his decease, and such default or failure of children, issue, and eldest son as aforesaid, for her the said G. H., her executors, administrators, and assigns, for her and their proper use and benefit; but if the said G. H. shall have departed this life in the lifetime of the said E. F. her intended husband, Then as to one moiety or equal half part of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, In trust after her decease for him the said E. F., his executors, administrators, and assigns, for his and their proper use and benefit; And as to the other moiety or equal half part thereof, after the decease of the said E. F., upon and for such trusts, intents, and purposes as she the said G. H., notwith-

standing her coverture, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, to be by her signed and published in the presence of and to be attested by the like number of credible witnesses, shall direct or appoint; And in default of such direction or appointment, and so far as every or any such direction or appointment shall not extend, In trust for the person or persons who, by virtue of the statutes made for the distribution of the estates and effects of intestates, would be entitled thereto, as the next of kin of the said G. H. at the time of her decease, in case she had departed this life intestate and unmarried.

Declaration of trust of several sums of money.

CXXXVI. And it is hereby agreed and declared between and by the said parties to these presents, that the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall stand and be possessed of and interested in the several sums of £——, £——, and £——, and interest, hereinbefore assigned, or expressed and intended so to be, In trust for the said G. H., her executors, administrators, and assigns, until the said intended marriage shall be duly had and solemnized; and immediately after the solemnization thereof, Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall lay out and invest the several sums of £——, £——, and £——, as and when the same respectively shall be received, in their or his names or name, in the purchase of a competent share or competent shares of the parliamentary stocks or funds of Great Britain, or at interest upon government or real securities in England; and do and shall, with the consent in writing of the said E. F. and G. H. his intended wife, during their joint lives, and after the decease of either of them with the consent in writing of the survivor of them, during his or her life, and after the decease of the survivor of them at the discretion of the trustees or trustee for the time being,

For intended wife until marriage.

After marriage, to invest same in the funds or upon real securities, and vary securities.

alter, vary, and transpose the said stocks, funds, and securities as to him or them shall seem proper; And do and shall during the life of the said E. F. pay the interests, dividends, and annual produce of the said several sums of £——, £——, and £——, and the stocks, funds, and securities in or upon which the same shall or may be laid out or invested, unto or permit the same to be received by the said E. F. and his assigns, for his and their proper use and benefit; And after the decease of the said E. F., do and shall, during the life of the said G. H., pay the interest, dividends, and annual produce of the said last-mentioned trust monies, stocks, funds, and securities unto her the said G. H. or her assigns, for her and their proper use and benefit; And it is hereby agreed and declared between and by the said parties to these presents, that the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, Do and shall, immediately after the decease of the survivor of them the said E. F. and G. H. his intended wife, stand and be possessed of and interested in the said sums of £——, £——, and £——, and the stocks, funds, and securities in or upon which the same shall or may be laid out or invested, and the interest, dividends, and annual produce thereof, and do and shall stand and be possessed of and interested in the said sum of £——, when and as the same shall or may be laid out or invested, and the interest, dividends, and annual produce thereof, and do and shall stand and be possessed of and interested in the said sum of £——, when and so soon as the same shall become raisable under the trusts hereinbefore for that purpose declared, and of and in the stocks, funds, and securities in or upon which the same shall or may be laid out or invested, and the interest, dividends, and annual produce thereof, In trust for all and every or such one or more exclusively of the other or others of the issue of the said intended marriage, (whether children or grandchildren, born in the lifetime of the said E. F. and G. H., or the survivor of them, at such ages, days, or times not happening after twenty-one years from the decease of the survivor of them the said E. F. and G. H., and if more than one, in such parts, shares, and proportions, and with such

For intended husband for life, with remainder to intended wife for life.

After decease of survivor, in trust for issue of marriage, as husband and wife, or survivor of either, shall appoint.

provisions for their respective maintenance or education, and in such manner as the said E. F. and G. H. during their joint lives, or as the said E. F., if he shall survive the said G. H. his intended wife, shall by any deed or deeds, instrument or instruments in writing, to be by them or him respectively sealed and delivered in the presence of and to be attested by two or more credible witnesses, direct or appoint, or as the said G. H., if she happens to survive the said E. F., shall with the consent in writing of the said A. B. and C. D., and the survivor of them, and the executors, administrators, or assigns of such survivor, by the like deed or deeds, instrument or instruments in writing, to be by her executed in manner aforesaid, direct or appoint; And in default of such direction or appointment, and so far as every or any such direction or appointment shall not extend, In trust for all and every the children and child of the said E. F. by the said G. H., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between or among such children if more than one, in equal shares and proportions as tenants in common, and if there shall be but one such child, then the whole to be in trust for such one child.

In default of appointment, for children as tenants in common.

During joint lives of husband and wife, to pay interest and dividends to husband until he shall attempt to assign or incumber the growing payments, or be declared bankrupt or become insolvent.

CXXXVII. Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, during the joint lives of the said E. F. and G. H., pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, unto or permit the same to be received by the said E. F., unless and until he shall attempt to assign or incumber the growing payments thereof, or until he shall be found and declared a bankrupt, or shall become insolvent, or make and enter into any composition with his creditors, or shall take or accept the benefit of any Act of Parliament made or to be made for the relief of insolvent debtors; And from and after the determination of the aforesaid trust hereinbefore declared for the benefit of the said E. F., do and shall pay and apply the interest, dividends, and annual produce of the said trust monies, stocks, funds,

After the determination of such trust, to wife for life; and after the decease of either,

and securities, to such person or persons, and for such intents and purposes, as the said G. H. shall from time to time, notwithstanding her coverture, by any writing or writings under her hand, (but not so as to dispose of or affect the same by way of anticipation), direct or appoint; and in default of such direction or appointment, into her own hands, for her own sole and separate use and benefit, independently and exclusively of the said E. F. her intended husband, and without being in any wise subject to his debts, control, or engagement; and the receipts of the said G. H. or of her appointees, notwithstanding her coverture, to be from time to time sufficient discharges for the same; and from and after the decease of such of them the said E. F. and G. H. as shall first depart this life, do and shall pay the said interest, dividends, and annual produce unto or permit the same to be received by the survivor of them the said E. F. and G. H., his intended wife, during his or her life; and from and immediately after the decease of the survivor of them the said E. F. and G. H., Upon trust that they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall stand possessed of the said trust monies, stocks, funds, and securities, In trust for all and every or such one or more exclusively of the other or others of the child or children of the said E. F. by the said G. H., at such age or time, ages or times, and if more than one, in such shares and proportions, and for such estate or estates, as the said E. F. and G. H. shall, by any deed or deeds, with or without power of revocation, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, jointly appoint; And in default of such appointment, then as the survivor of them the said E. F. and G. H. shall, by any deed or deeds, with or without power of revocation, to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his or her last will and testament, or any codicil or codicils thereto, to be by him or her signed and published in the presence of and to be attested by three or more credible witnesses, appoint; And for want of such appointment, In trust for all and every the child or children of the said E. F.

to the survivor for life.

After the decease of survivor, in trust for children, as husband and wife shall jointly appoint by deed.

In default, as survivor shall appoint.

In default of appointment, for children as te-

nants in common, with clause of hotchpot.

by the said G. H., who, being a son or sons, shall attain the age of twenty-one years, or who, being a daughter or daughters, shall attain that age or marry, to be divided between such children, (if more than one), in equal shares and proportions as tenants in common; and if there shall be but one such child, the whole to be in trust for that one child; But no child taking under any appointment to be made in exercise of the aforesaid powers, or any of them, shall be entitled to any share of the unappointed part of the said premises, without bringing his or her appointed share or shares into hotchpot, and accounting for the same accordingly: And if there shall be no child of the said intended marriage who shall become entitled to the said trust premises under the trusts aforesaid, then upon trust for the survivor of them the said E. F. and G. H., his or her executors, administrators, or assigns, for his, her, or their absolute use and benefit.

In default of children, upon trust for survivor of husband and wife absolutely.

Declaration of trusts of money secured upon mortgage.

CXXXVIII. And it is hereby agreed and declared between and by the parties to these presents, that they the said A. B., C. D., and E. F., and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of all and singular the premises hereinbefore assigned, or expressed and intended so to be, upon the trusts, and to and for the intents and purposes hereinafter expressed and declared of and concerning the same; (that is to say), Upon trust for the said G. H. [*tenant for life*], and L. M., until the said intended marriage shall be had and solemnized, according to their respective estate and interest therein immediately previously to the execution of these presents; and from and immediately after the solemnization of the said intended marriage, Upon trust, that they the said trustees, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall either permit and suffer the said several sums of money and premises hereinbefore assigned, or expressed and intended so to be, to remain in their respective actual states of investment, or do and shall, with the consent in writing of the said I. K. and L. M. [*intended husband and wife*], during their joint

Until marriage, upon the same trusts as the funds stood previously to execution of indenture; and after solemnization, upon trust to vary securities.

lives, and after the decease of either of them, with the consent of the survivor of them, and after the decease of such survivor, at the discretion of the trustees or trustee for the time being of these presents, call in and receive the same or any part thereof; and do and shall (with such consent, or at such discretion as aforesaid) lay out and invest the money so to be called in and received as aforesaid, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales [*but not on real securities in Ireland*]; And do and shall, from time to time, (with such consent or at such discretion as aforesaid), alter, vary, and transpose the said stocks, funds, and securities, as to them or him shall seem proper; And do and shall stand and be possessed of and interested in the interest, dividends, and annual produce of all and singular the said trust monies, stocks, funds, and securities, Upon trust, that they the said trustees or trustee do and shall, during the joint lives of the said I. K. and L. M., pay and apply the clear yearly sum of £——, part of such interest, dividends, and annual produce, free from all deductions, by equal half-yearly payments, to such person or persons only, and for such intents and purposes only as the said L. M., notwithstanding her coverture, shall from time to time, by any writing under her hand, (but not so as to dispose of or affect the same by way of anticipation), direct or appoint; And in default of such direction or appointment into the proper hands of the said L. M., for her sole and separate use and benefit, independently and exclusively of the said I. K., her intended husband, and without being subject to his debts, controul, interference, or engagements, and the receipts of the said L. M., or of her appointees, notwithstanding her coverture, to be from time to time sufficient discharges for the same; the first half-yearly payment of such annuity or sum of £—— to be made on the —— day of —— next ensuing the date of these presents; And do and shall pay all the residue of the said interest, dividends, and annual produce unto, or permit the same to be received by, the said I. K., or his assigns; And from and immediately after the decease of either of them the said I. K. and L. M., do and shall pay the whole of the

And during joint lives of husband and wife, to pay annuity to wife for her separate use for pin-money.

Residue to husband; and after the decease of either, upon trust for survivor for life.

said interest, dividends, and annual produce unto, or permit the same to be received by, the survivor of them the said I. K. and L. M., during his or her life; And from and immediately after the decease of the survivor of them, the said I. K. and L. M., Upon trust, that they the said trustees and trustee, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, In trust for all and every or such one or more, exclusively of the other or others of the child or children of the said I. K. by the said L. M., at such age or time, ages or times, and if more than one in such shares and proportions, and for such estate or estates as the said I. K. and L. M., his intended wife, shall by any deed or deeds, with or without power of revocation, to be by them sealed and delivered in the presence of and to be attested by two or more credible witnesses, jointly appoint; And in default of such appointment, then as the survivor of them the said I. K. and L. M. shall by any deed or deeds, to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, to be by him or her signed and published in the presence of and to be attested by a like number of credible witnesses, appoint; And for default of such appointment, In trust for all and every the child or children of the said intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or who, being a daughter or daughters, shall attain that age, or marry, to be divided between such children, if more than one, in equal shares and proportions, as tenants in common; and if there shall be but one such child, the whole to be in trust for that one child; But no child taking under any appointment to be made in exercise of the aforesaid powers, or any of them, shall be entitled to any share of the unappointed part of the said premises, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; And if there shall be no child of the said intended marriage who shall become entitled to the said trust monies under the

After decease of survivor, upon trust for children as husband and wife shall jointly appoint by deed; in default, as survivor shall appoint by deed or will.

In default of appointment, for children equally; with clause of hotchpot.

In default of children, to husband absolutely.

trusts aforesaid, Then upon trust for the said I. K., his executors, administrators, and assigns, to and for his and their own absolute use and benefit.

Of a money fund (being the intended wife's property) as an additional security for the payment of her pin-money, secured to her under the trusts of a term in a settlement of even date of the husband's lands.

CXXXIX. Upon trust, in the first place, for better securing to the said C. D. the due and regular payment of the annuity or yearly sum of £—— hereinbefore mentioned to have been provided for her during the joint lives of the said A. B. and C. D., by the said in part recited indenture of settlement bearing even date herewith; and for that purpose, upon this further trust, that the said E. F. and G. H., and the survivor of them, his executors or administrators, do and shall from time to time during the joint lives of the said A. B. and C. D., yearly and every year, retain and take the sum of £—— of like lawful money as aforesaid, by and out of the dividends, interest, and income of the said trust monies, stocks, funds, and securities, and do and shall stand and be possessed of the said yearly sum of £——, upon the same or the like trusts, for the separate use of the said C. D., and with the same or the like restrictions, power of giving discharges, and other circumstances as are declared and expressed of and concerning the annuity or yearly sum of £——, secured to the said C. D. by the said recited indenture of settlement bearing even date herewith, to the intent that the said trust monies, stocks, funds, and securities, or the dividends, interest, and income thereof, may be a fund for the payment of the said yearly sum of £——, either in aid of the hereditaments charged or made chargeable with the payment thereof as hereinbefore mentioned, or as the primary fund, and in exoneration of the same hereditaments, at the discretion of the said C. D.; yet, nevertheless, so that the said C. D. shall be entitled only to one yearly sum of £——, and not to several sums of that amount, and so also that as between the said A. B. and his assigns on the one part, and any person or persons claiming any beneficial interest in all or any of the hereditaments so charged or made chargeable with the said annuity of £—— as aforesaid, by, from, or under the said A. B., the said trust monies, stocks, funds, and securities, or the interest, dividends, and income thereof, shall be and be considered as the pri-

mary fund for the payment of the said annuity of £——, in exoneration of the same hereditaments; And upon this further trust, that they the said E. F. and G. H., and the survivor of them, his executors or administrators, do and shall permit and suffer, or authorize and empower the said A. B. and his assigns, from time to time, during the joint natural lives of the said A. B. and C. D., to receive and take the residue of the said dividends, income, and interest, and also so much or such part of the said yearly sum of £——, to be retained by the said trustee or trustees under the trusts hereinbefore contained, as shall from time to time have been raised and paid to the said C. D., or her appointees, under and by virtue of the trusts in that behalf contained in the said recited indenture of settlement, or (as the case shall require) the whole of the said yearly sum; and after the death of the said C. D., do and shall thenceforth from time to time, during the natural life of the said A. B., permit and suffer, or authorize and empower the said A. B. and his assigns to receive and take the whole of the said dividends, interest, and income.

For all the grandchildren of the settlor per stirpes, with cross limitations between the grandchildren of each parent. (After trusts, for the children and issue of a married daughter of settlor).

CXL. Then upon trust that the said trustees or trustee for the time being do and shall pay, transfer, and assign the said sum of £—— Navy Annuities, and the dividends, interest, and income thereof, unto all and every other the grandchild or grandchildren of the said A. B. [*the settlor*], by C. B. her late husband, living at the decease of the survivor of them the said A. B., C. D., and E. F. [*tenants for life*], or, which shall last happen, such failure of issue as aforesaid, or issue then living of a deceased grandchild or grandchildren if more than one, as tenants in common and not as joint-tenants, and in such proportions (if occasion shall require) that the said grandchild or grandchildren and more remote issue shall take per stirpes and not per capita, and so as no person or persons may take under the description of issue, unless the parent or parents respectively of such issue shall be dead; the share or shares of the said grandchild or grandchildren or other issue respectively to be payable and paid, assigned, and transferred to him, her, or them respectively, at such age or day or respective

ages or days as are hereinbefore appointed with respect to the shares of the children and issue of the said G. H. and I. his wife; And in case any one or more of such grandchildren or other issue, who shall become entitled as aforesaid, shall afterwards and within twenty-one years from the death of the survivor of them the said A. B., C. D., and E. F. depart this life, as to a male or males under the age of twenty-one years, without leaving any issue of his or their body or respective bodies lawfully begotten, living at his or their death or deaths, and as to a female or females under that age and without having been married (*a*), leaving a brother or brothers, sister or sisters, then as to the original and also any surviving or accruing share or shares of the grandchild, grandchildren, or other issue so dying, and all accumulations (if any) of the dividends, interests, and income thereof, In trust for his, her, or their brother or sister, brothers or sisters, to be equally divided between them if more than one, as tenants in common, and to be payable and paid, assigned, and transferred at the times aforesaid (*b*); And in case there shall be no such grandchild or grandchildren of the said A. B. by the said C. B. her late husband, or issue of a deceased grandchild living at the death of the survivor of them the said A. B., C. D., and E. F., or, which shall last happen, such failure of issue of the said G. H. and I. his wife as aforesaid, or if all the same grandchildren and issue shall depart this

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(*a*) " Then as to the original &c., and also &c., In trust for the other or others of the same grandchildren and issue entitled as aforesaid, to be divided between them, if more than one, in such parts, shares, and proportions, and to be payable and paid as aforesaid, and transferred at such ages, days, or times as are hereinbefore appointed respecting their original shares of the said trust monies."

(*b*) " And in case the said grandchildren or their issue so dying as aforesaid shall leave no brother or sister living at his, her, or their death or deaths, then such his, her, or their share or shares shall be held upon the same trusts as if he, she, or they had died in my lifetime."

life within twenty-one years from the death of the survivor of them the said A. B., C. D., and E. F., as to males under the age of twenty-one years, and without leaving any issue of their bodies lawfully begotten, living at their deaths; and as to females under that age and without having been married, Then upon trust for &c.

To accumulate interest.

CXLI. Upon trust that they the said A. B. and C. D., or the survivor of them, or his executors or administrators, do and shall add all dividends and interest now due for the said legacy or sum of £—— capital stock and share of personal estate hereby assigned or intended so to be, to the principal or capital of the same legacy and share respectively, as part thereof, to the intent that the same may be deemed principal monies.

For accumulation until all the children of a particular person shall have attained twenty-one. (In wills).

CLXII. And I do hereby declare my will to be (*a*), that my said trustees or trustee for the time being shall, during the period of twenty-one years, to be computed from the time of my decease, or, which shall first happen, until all the children of my brother A. B. who shall be living from time to time shall have attained their ages of twenty-one years, or until the only child who shall remain under twenty-one shall depart this life under that age, receive and take the rents, issues, and profits of my said freehold messuages &c., and the dividends, interest, and income of the said stocks, funds, and securities, and invest and lay out the same in the purchase of a competent share or shares of the government stocks or public funds of Great Britain, or upon real securities in England or Wales, and do and shall receive the dividends, interest, and income of the said last-mentioned stocks, funds, and securities, and lay out and invest the same in or upon stocks, funds, or securities of the like nature, so that the same rents, issues, and profits, dividends, interest, and income may, during such period as aforesaid, accumulate by way or in the nature of compound interest; And from and after the expiration of the said period of twenty-

(*a*) As to trusts for accumulation, see Vol. I. book iii. chap. vii.

one years, or, which shall first happen, when and as soon as all the children of my said brother, N. P., who shall be living, from time to time shall have attained their ages of twenty-one years, or the only child who shall remain under twenty-one shall depart this life under that age, it is my will, and I hereby direct, that my said trustees or trustee for the time being Do and shall convey and assure my said freehold messuages &c., and assign and transfer all and singular the said stocks, funds, and securities, and the accumulations thereof, unto or between and among such child or children of my said brother as shall be then living, and the lawful issue of such of them as shall be then dead, if more than one, as tenants in common, and per stirpes and not per capita, and his, her, or their heirs, executors, administrators, and assigns, the shares of such of the same issue respectively as shall be a male or males to be a vested interest or vested interests in him or them respectively when and as he or they respectively shall attain the age of twenty-one years, and in such of the same issue respectively as shall be a female or females, when and as she or they respectively shall attain that age or be married, which shall first happen; And in case the only child of the said N. P. who shall remain under twenty-one shall depart this life, as to a son under that age, and as to a daughter under the age of twenty-one years, and also without having been married, and there shall not be any other child or issue of the said A. B., Then &c.

Of furniture for a married woman for life.

CXLIII. Upon trust that they the said A. B. and C. D., and the survivor of them, his executors and administrators, do and shall, from time to time, during the life of the said E. F., permit and suffer the said E. F. personally, for her separate and exclusive benefit, to have the possession and use of the said household furniture and other scheduled articles, hereby bargained and sold or otherwise assured, or intended so to be.

To sell furniture, and replace the same with other articles.

CXLIV. Do and shall from time to time sell and dispose of the said household goods and other articles of furniture, or any of them, when thereto requested by the said A. B. and C. D., or the survivor of them, and apply the produce

thereof in the purchase of other household goods and furniture, to be held upon the same or the like trusts as are hereinbefore and hereinafter declared of the household goods and furniture which should be sold and disposed of as aforesaid.

Of a third part of the property (of which the furniture is to be part), at a certain valuation.

CXLV. Do and shall assign and transfer all the said goods &c., and also so much and such part of the said trust monies &c. as, together with and inclusive of the same goods &c. (valuing the same at £—— and no more), shall be equal to one third part of the said trust monies &c., and also to one third part of the said goods &c., unto &c.

Cross limitations by way of trust, between issue of intended marriage.

CXLVI. And in case any one or more of the same issue, for whom a provision is hereby made, and who shall become entitled to the same provision under the trusts hereinbefore contained, shall depart this life, as to a male or males, under the age of twenty-one years, without leaving any issue of his or their body or respective bodies lawfully begotten living at his or their death or respective deaths, and as to a female or females, under that age and without having been married, then the original and also any additional or surviving share or shares of the male or female issue so dying, and the accumulations and savings, if any, of the dividends, income, and interest thereon, shall be held upon the same trusts, and under and subject to the same or the like limitations over, provisoes, declarations, and agreements, as if the issue so dying had never been born, or as near thereto as may be, and circumstances will permit; and in case there shall not be any issue of the said intended marriage, or no issue of the same marriage living at the death of the survivor of them the said A. B. and C. D., or if all the issue of the same marriage living at the death of the survivor of them the said A. B. and C D., and for whom a provision is hereby made, shall depart this life, as to a male or males, under the age of twenty-one years, without leaving any issue of his or their body or respective bodies lawfully begotten living at his or their death or respective deaths, or being a female or females, under the age of twenty-one years and without having been married, then subject and without prejudice to the power of appointment

hereinbefore contained, and also subject and without prejudice to the power of giving such advancement as hereinafter mentioned, they the said &c.

Cross limitations between the issue of children of intended marriage, so far as such issue are from the same parent.

CXLVII. And in case any one or more of the issue of any one or more of the same children shall, in the lifetime of both or either of them the said A. B. and C. D., his intended wife, or within twenty-one years from the death of the survivor of them, depart this life, as to a male or males, under the age of twenty-one years, and as to a female or females, under that age and without having been married, leaving a brother or brothers, sister or sisters, then as to the original and also any additional or surviving share or shares of the male or female issue so dying, and all accumulations and savings of interest thereon, In trust for his, her, or their brother or sister, brothers or sisters, to be equally divided between them, if more than one, share and share alike, as tenants in common and not as joint tenants, and to be payable at the times last aforesaid, or as soon afterwards as the circumstances of the case will permit. And in case there shall be no child of the said intended marriage, or no child who, being a son, shall attain the age of twenty-one years, or dying under that age leave issue of his body lawfully begotten living at his death, or who, being a daughter, shall attain that age or be married, with such consent as aforesaid, or leave issue of her body lawfully begotten living at her death, Then, subject to such directions, limitations, or appointments as aforesaid &c.

For issue per stirpes as tenants in common, payable as to males at twenty-one, and as to females at twenty-one or marriage, with clause of substitution in favour of the other of the same issue in case of death.

CXLVIII. Then upon trust that they the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, do and shall transfer, assign, pay, apply, and dispose of the said sum of £—— Three per cent. Consolidated Bank Annuities, and every part thereof, and the dividends, interest, and proceeds thereof, unto the issue if only one, or all the issue if more than one, of the marriage of the said E. F. and G. his wife, who shall be living at the death of the survivor of them the said E. F. and G. his wife, (including children, grandchildren, or more remote issue), so as such issue, if more than

one, may take per stirpes and not per capita if they shall be from different branches, and equally if they shall be from the same branch, and so as no person may take under the description of issue unless the parent or parents respectively of such issue shall be dead; the share or shares of such of the same issue as shall be a male or males to be payable and paid, assigned, and transferred to him and them respectively, when and as he and they respectively shall attain his and their age or respective ages of twenty-one years, and the share or shares of such of the same issue respectively as shall be a female or females to be payable and paid, assigned, and transferred to her or them, when and as she and they respectively shall attain her or their age or respective ages of twenty-one years, or day or respective days of marriage, which as to each of them respectively shall first happen; or in case any of such issue shall attain the said ages or days before the death of the survivor of them the said E. F. and G. his wife, then their respective shares to be paid and assigned to them as soon as conveniently may be after the death of the survivor of them the said E. F. and G. his wife: And in case any one or more of such issue living at the death of the survivor of them the said E. F. and G. his wife who shall be entitled as aforesaid, being a male or males, shall depart this life under the age of twenty-one years, without leaving any issue of his or their body or respective bodies lawfully begotten living at his or their death or respective deaths, or being a female or females, shall depart this life under the age of twenty-one years without having been married, Then the part or share, parts or shares of the issue so dying (including as well any surviving or accruing share or shares as the original share or shares) of and in the said sum of £—— 3 per cent. Consolidated Bank Annuities, shall be held upon the same or the like trusts, for the benefit of the other or others of such issue of the marriage of the said E. F. by G. his wife, who shall be living at the death of the survivor of them the said E. F. and G. his wife, in the same or the like manner, to all intents and purposes, as if the issue so dying had never been born, or had died prior to the death of the survivor of them the said E. F. and G. his wife; And in case there shall be no issue

of the marriage of the said E. F. and G. his wife, or no issue of the same marriage living at the death of the survivor of them the said E. F. and G. his wife; or if all the issue of the marriage of the said E. F. and G. his wife, living at the death of the survivor of them, being males, shall depart this life under the age of twenty-one years, without leaving any issue of their bodies lawfully begotten living at their deaths, or being females, shall depart this life under the age of twenty-one years without having been married, Then upon trust that they the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, do and shall stand and be possessed of the said sum of £——, 3 per cent. Consolidated Bank Annuities, and the dividends, interest, and income thereof, In trust for the survivor of them the said E. F. and G. his wife, his or her executors, administrators, or assigns.

For parents for life; then for children, with cross limitations between them, and in default of children, for surviving parent, with a proviso for maintenance and advancement. (Short form).

CXLIX. And upon this further trust, that they the said trustee and trustees for the time being shall permit and suffer, or authorize and empower the said A. B. and his assigns to receive all the dividends, interest, and income of the said trust monies, stocks, funds, and securities, which shall become due from time to time during the natural life of the said A. B., and after the death of the said A. B., shall permit and suffer, or authorize and empower the said C. D. and her assigns to receive all the dividends, interest, and income of the said trust monies, stocks, funds, and securities which shall become due thenceforth, during the natural life of the said C. D., and after the death of the survivor of them the said A. B. and C. D., shall stand and be possessed of the said trust monies, stocks, funds, and securities, upon the trusts hereinafter declared thereof; (that is to say), Upon trust for the child, if only one, and if more than one, then all the children of the said intended marriage, to be equally divided between or amongst the same children, if more than one, in equal shares and proportions, as tenants in common and not as joint tenants; the shares of such of the same children respectively as shall be sons to be vested in them respectively at their respective ages of twenty-one years, or deaths under that age leaving issue living at that time, and

the shares of such of the same children respectively as shall be daughters to be vested in them respectively at their respective ages of twenty-one years or days of marriage, which as to each of them respectively shall first happen, and to be payable and paid to them respectively as soon after the said respective ages or days shall be attained, and also after the death of the survivor of the said A. B. and C. D., as conveniently may be; And in case any one or more of the said children of the said intended marriage, being a son or sons, shall die under the age of twenty-one years without leaving any issue of his or their body or respective bodies living at his or their death or respective deaths, or being a daughter or daughters, shall die under that age, and also before she or they respectively shall have been married, then as to the original share or shares of the said trust monies, stocks, funds, and securities, which under the trusts hereinbefore contained shall belong to the child or children respectively who shall die as aforesaid, and also that part or share, or those several and respective parts or shares of the same trust monies, stocks, funds, and securities, which from time to time shall belong to or be taken by the same child or children respectively, so dying as aforesaid under this present provision, and also the accumulations and savings (if any) of the interest, dividends, and income of the share or shares of the child or children respectively so dying, In trust for the other, and, if more than one, the others of the same children, to be equally divided between or among the same children, if more than one, share and share alike, as tenants in common and not as joint tenants, and his, her, and their executors, administrators, and assigns; to be vested at the respective ages, days, or times hereinbefore appointed respecting the original share or shares of the same child or children, and to be payable and paid at the time or several and respective times appointed for the payment of the said original share or shares, or as soon after the death of each respective child, dying as aforesaid, as conveniently may be; And in case there shall be no child of the said intended marriage, or no child who, being a son, shall attain the age of twenty-one years, or die under that age leaving issue living at his death, or who, being a daughter, shall attain that age,

or be married, Then upon trust for the survivor of them the said A. B. and C. D., his or her executors, administrators, and assigns. And upon this further trust, that after the death of the survivor of the said A. B. and C. D., and thenceforth during the minority of any child or children of the said intended marriage, the said trustee or trustees for the time being shall apply all or any part of the dividends, interest, and income of the portion of each of the same children respectively, who for the time being shall be a minor, in and for the maintenance, education, advancement, pocket money, and clothing of the same child, and shall add to the principal of the portion of each of the same children any savings of the dividends, interest, and income of his or her portion, and improve the same by way or in the nature of compound interest, and so that the same may follow and be subject to all the trusts, limitations, declarations, and agreements hereinbefore contained respecting the original portion of the same child; and shall, after the death of the survivor of the said A. B. and C. D., in his or their discretion, or, in the lifetime of the said A. B. and C. D., or the survivor of them, with his, her, or their consent in writing, advance or apply any part, not exceeding one half, of the portion of each or any of the sons of the said intended marriage, for the advancement and preferment in the world of the same son, notwithstanding the same son shall not at that time have an absolute interest in his said portion.

Trusts of bank stock, providing as to bonuses, &c.

CL. It is hereby declared and agreed, by and between all the parties to these presents, and the said A. B., with the privity, consent, and approbation of the said C. D., her said intended husband, (testified by his executing these presents), Doth hereby direct and appoint, that the said trustees, and the survivors and survivor of them, and the executors and administrators of the survivor of them, shall henceforth stand possessed of, interested in, or entitled to the said sum of £—— capital stock, so transferred into their names by the said A. B. as aforesaid, and of, in, and to all bonuses or extraordinary dividends which may be declared payable in respect of the said sum; and also of and to the dividends, interest, and annual income of the same, Upon trust for the

For intended wife until marriage.

said A. B., her executors, administrators, and assigns, in the mean time, and until the said intended marriage shall be duly had and solemnized; and from and immediately after the solemnization thereof, Upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, conditions, and agreements hereinafter expressed, declared, and contained of and concerning the same; (that is to say), Upon trust that they the said trustees, and the survivors and survivor of them, and the executors, administrators, and assigns of the survivor of them, do and shall, from time to time, during the life of the said A. B., with her consent, to be testified by some writing under her hand, and after her decease with the consent of the said C. D., if he shall survive the said A. B., to be testified by some writing under his hand, and after the decease of the survivor of them, then in the discretion and of the proper authority of them the said trustees, or the survivors or survivor of them, his executors or administrators, sell and dispose of the said sum of £—— capital stock, and any accumulations and additions thereto, by reason of any such bonuses or extraordinary dividends as aforesaid, or any part of the same, and with such consent or in such discretion as aforesaid lay out and invest the produce thereof in or upon any other of the parliamentary stocks or funds of Great Britain, or upon real securities in the principality of Wales or in England; And also do and shall lay out and invest in or upon any such stocks, funds, or securities as aforesaid the amount of any bonuses or extraordinary dividends, (not being stocks or funds), which shall be received by the said trustees or trustee for the time being in respect of the said sum of £—— capital stock, during the continuance of the same, upon the trusts of these presents, or in respect of any other sum of bank stock which shall at any time be purchased with the produce of all or any part of the stocks, funds, or securities, from time to time be subject to the same trusts, under the provision lastly hereinbefore contained; And do and shall stand and be possessed of the said sum of £—— capital stock, and bonuses or additions thereto, and of the stocks, funds, and securities in or upon which the produce thereof shall from time to time be invested, and the interest,

After marriage with consent, &c., to dispose of stock and bonuses, and invest proceeds in other funds, or upon real securities.

dividends, and income of the same stocks, funds, and securities respectively, Upon trust &c. [*for separate use of wife during the joint lives of the wife and husband*]; And from and immediately after the decease of either of them the said A. B. and C. D., Upon trust to permit and suffer, or authorize and empower the survivor of them the said A. B. and C. D., his or her assigns, to receive all the dividends, interest, and income of the said trust monies, stocks, funds, and securities, which shall become due from time to time during his or her natural life; And from and immediately after the decease of the survivor of them the said A. B. and C. D., his said intended wife, Upon trust &c. [*trusts for children*], unto the person or persons, who, at the time of the decease of the survivor of them the said A. B. and C. D., or, which shall last happen, at the time of such failure of the issue of the said intended marriage as aforesaid, shall be of the blood of the said A. B. and in next of kin to her, and who, in his, her, or their own right, or in right of his, her, or their representation, would be entitled to the same under the statutes for the distribution of the effects of intestates, in case the said A. B. had died at that time possessed thereof and intestate, and without being under coverture; and if there shall be more than one such person, then to be divided between them, in such parts, shares, and proportions as they would be entitled to the same under the said statutes.

Upon trust during joint lives of husband and wife, for wife's separate use; and after decease of either, for survivor for life.

After decease of survivor, for children.

In default of children, for wife's next of kin.

CLI. And it is hereby further directed, declared, and agreed by and between the parties to these presents, that the said A. B. and C. D., and the survivor of them, his executors and administrators, shall retain to and for himself and themselves the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them; and shall stand and be possessed of the said sum of £——, when raised, upon the trusts, and for the ends, intents, and purposes hereinafter expressed and declared concerning the same; (that is to say), Upon trust for such person or persons, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements, as the said E. F. and G. H. by any deed or deeds, instrument or instruments in writing, to be

Of moiety to retain expenses, and pay as two shall jointly appoint; in default of appointment, to purchase lands and settle same according to the uses of certain lands. To pay interest to persons who would be entitled to rents of land purchased.

sealed and delivered by them in the presence of one, two, or more credible witness or witnesses, and attested by the same witness or witnesses, shall jointly direct, limit, or appoint; And in default of such direction, limitation, or appointment, do and shall lay out and invest the said sum of £——, or, as the case shall require, the residue thereof, in the purchase of lands of inheritance, to be situate in Great Britain, to be settled to the same or the like uses as are hereinbefore declared of and concerning the manor, messuages, and hereditaments hereby bargained and sold, or intended so to be; And do and shall pay the interest of the said sum of £——, or, as the case shall require, the residue thereof, to the person or persons who, for the time being and from time to time, would be entitled to the rents and profits of the lands hereby directed to be purchased, in case the same had been purchased and settled to the uses hereinbefore directed to be limited and declared thereof; and upon no other trust, nor for any other end, intent, or purpose whatsoever.

For kindred in a certain degree per stirpes.

CLII. In trust for the person or persons of kin to the said A. B., and being a brother or sister, brothers or sisters, or issue of a deceased brother or sister, brothers or sisters, who shall be living when all the trusts hereinbefore declared, or which shall be declared under or by virtue of any such appointment or appointments as aforesaid, shall, as to the said trust monies, stocks, funds, and securities respectively determine, or fail of effect, to be divided between them, if more than one, as tenants in common and not as joint-tenants, and per stirpes and not per capita, so that the issue of each deceased brother or sister may take the share which that brother or sister, if living, would have taken; and so and in such manner that the issue of each brother or sister respectively who shall be dead, may as between themselves, if more than one, take equal shares as tenants in common and not as joint-tenants, and so as no person shall take under the description of issue unless his or her parent shall be dead; and in case no such brother or sister, or issue of a deceased brother or sister shall be then living, &c.

Money when paid to be in-

CLIII. And it is hereby further declared and agreed,

by and between the parties to these presents, That the said sum of £—— to be paid as aforesaid by the said A. B. shall, when the same shall be paid, be laid out and invested by the said C. D. and E. F., or the survivor of them, his executors or administrators, or other trustee or trustees thereof for the time being, in or upon Government or real securities, in the same or the like manner, and under and subject to the same or the like restrictions, as the money arising from the sale of the said messuages &c., so charged or made chargeable with the said sum of £—— and £——, as hereinbefore directed to be laid out and invested, and that the said sum of £——, when paid, shall be considered as paid in lieu and satisfaction of the said sum of £—— and £——, directed to be raised and paid as aforesaid; Subject nevertheless and without prejudice to the right of the said A. B., his executors, administrators, or assigns, to the said sum of £——, and the interest thereof, and the stocks, funds, and securities in or upon which the same shall be invested, so far as the same shall not be wanted for answering the trusts hereinbefore declared of the said sums of £—— and £——, and the maintenance, money, and interest to be paid in respect thereof: Provided always, and it is hereby further agreed and declared, that the stocks, funds, and securities in or upon which the same sum of £—— shall be invested, shall belong to and be held for the benefit of the person or persons, if any, who can or may claim the said sum of £—— hereinbefore charged on the said messuages &c., so that the child or children, if any, of the said intended marriage, who shall be entitled to the same sum of £——, may have the full benefit, and bear any loss (if any), of the stocks, funds, and securities in or upon which the said sum of £——, to be paid by the said A. B., shall be invested; Subject nevertheless and without prejudice to the right of the said A. B., his executors, administrators, and assigns, to receive the dividends, interest, and income thereof, in the meantime, and until the child or children of the said intended marriage shall be entitled to maintenance-money, or interest on his, her, or their portion or respective portions, pursuant to the trusts hereinbefore declared con-

vested in like manner, and subject to the like restrictions as the money arising from the sale of realty.

Declaration that interest of sum paid in discharge of lands from portions, shall be received by the party making payment, till maintenance and interest required for children entitled to portions.

cerning the same; And that such maintenance-money and interest may be to the extent of the dividends and income of the stocks, funds, and securities to be purchased with the said sum of £——, to be paid by the said A. B. as aforesaid; And also, that if and in case all or any part of the said sum of £—— shall become payable, then the said sum of £—— or so much thereof as shall become payable, shall be raised, answered, and paid out of a competent part of the said stocks, funds, and securities; and the residue of the same stocks, funds, and securities shall be transferred to the said A. B., his executors, administrators, or assigns.

In favour of illegitimate children. (In wills).

CLIV. Upon trust (*a*) that he the said A. B., his executors or administrators, Do and shall, as soon as conveniently

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(*a*) This Form, drawn by the late Professor Park, occasioned the following observations, which will sufficiently explain its purport and effect:—"On an anxious reconsideration of the peculiar circumstances of this transaction, I have thought it advisable to remodel the trusts in the form in which they now stand, as the best mode of meeting the several difficulties arising from the situation of the parties. The advantages of the present arrangement are, 1st, that in no case can any share lapse by the death of a child in the life of the testatrix; 2nd, that the expense of repeated administrations may be saved by the *lineal* representatives of the children (who alone could administer), taking as *personæ designatæ* under the character of *issue;* and, 3rdly, that in no case that I can contemplate, will the Crown be entitled to the share of any deceased child.

"If any of the children, whether adult or not adult, die before the testatrix, leaving any issue, such issue will, as the draft now stands, stand in the place, and take the share, of the deceased child. If no issue, the whole property will be shared by the surviving children, as if the deceased child had never existed, and there will be no lapse, because such child will never have fulfilled the character of a legatee. If all the children survive the testatrix, and one or more of them die in the lifetime of the others, leaving issue, or having made any disposition of the share, that share will then be taken by the issue, or the persons in whose favour the disposition is made; and if there are no issue, and no disposition has been made, the share will go to the surviving children, and the issue of any who are dead. I think it is advisable that the vesting of the shares should not be postponed as to any of the children, but that they should vest immediately on the death of the testatrix, (though not

may be after my decease, call in and convert into money all such of my said personal estate and effects as shall not consist of money, or good and valid securities for money; and Do and shall, by and out of the monies which shall come to his or their hands as such trustee or trustees as aforesaid, in the first place, pay and discharge all my just debts and funeral and testamentary expenses, and also the expense of providing decent mourning for such of my domestic servants as shall be living with me at my decease; and do and shall stand and be possessed of, interested in, and entitled to all the rest and residue of the said trust-monies, stocks, funds, and securities, Upon the trusts, and for the ends, intents, and purposes, and subject to the powers and provisions hereinafter contained; (that is to say), Upon trust for such of my natural children hereinafter described; (namely), E. A. B. otherwise W., born at ——, on the —— day of ——, now residing with Miss H., at &c., in the county &c., J. H. B. otherwise F., born at ——, on the —— day of ——, now residing at ——, S. H. B., born at ——, on the —— day of ——, now residing with me, and E. B., born at ——, on the —— day of ——, and now also residing with me, as shall be living at my decease, and the issue of such of my said children as shall be then dead, and their respective executors, administrators, and assigns, as tenants in common, and in such proportions that the same issue may take per stirpes and not per capita, if they shall be from different branches, and equally if they shall be from the same branch, and so that such respective issue shall take the share only which his, her, or their parent or respective parents would have taken if then living, and that no person shall take under the description of issue unless his or her parent shall be dead; the share or respective shares of such of the same children and issue respectively as, being a male or males, shall have then attained the age of twenty-one years,

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be paid till twenty-one), to afford the immediate opportunity of making a bequest, which, as to females, may be done after twelve. To exclude the Crown in the event of all the children dying without issue, the testatrix should select some other more remote object of her bounty, and I have left a blank in the draft for that purpose."

or being a female or females, shall have then attained that age or been married, to be payable and paid, assigned, and transferred to them respectively, as soon as conveniently may be after my decease, and the share or respective shares of the other or others of the same children and issue to be payable and paid, assigned, and transferred to him, her, or them respectively, being a male or males, when and as he or they respectively shall attain his or their age or respective ages of twenty-one years, or being a female or females, when and as she or they respectively shall attain that age or be married: Provided always, and I do hereby declare my will to be, that in case any or either of my said children who shall become entitled to any share or shares &c. in the said trust monies, stocks, funds, and securities, under the trusts hereinbefore contained, shall afterwards depart this life, without leaving any issue of his, her, or their body or respective bodies, living at his, her, or their death or respective deaths, or born in due time after, and also without having made any effectual assignment, bequest, or other disposition of his, her, or their said share or respective shares, that then and in such case, as well the original share or shares of and in the said trust monies, stocks, funds, and securities which shall belong to such child or children respectively, under the trusts hereinbefore contained, as also any accruing share or shares which from time to time shall belong to or be taken by the same child or children so dying as aforesaid, by virtue of this present provision, and also the accumulations (if any) of the dividends, interest, and income arising from the share or shares of the child or children respectively so dying, shall go, accrue, and belong to the other or others of the same children who shall be then living, and to the issue of such of them as shall be then dead, to be payable, and paid, assigned, and transferred at such and the same time or times, and in such and the same manner, shares, and proportions (as far as circumstances will permit) as are hereinbefore expressed concerning his, her, or their original share or shares of and in the said trust monies, stocks, funds, and securities: Provided also, that in case all and every of my said children hereinbefore named and described should depart this life without leaving any

issue of his, her, or their bodies living at his, her, or their deaths or respective deaths, or born in due time after, and also without having made any valid assignment, bequest, or other disposition of all the said trust monies, stocks, funds, and securities, then and in such case I give and bequeath the same trust monies, stocks, funds, and securities, or so much or such part or parts thereof to which any such assignment, bequest, or other disposition as aforesaid shall not extend, unto C. D., his executors, administrators, and assigns, to and for his and their own absolute use and benefit.

For issue of children who are substituted in the place of their parents, with cross limitations between the issue of each parent.

CLV. In trust for his or her issue living at his or her death, as tenants in common and not as joint tenants, to be paid, as to males, when and as they respectively shall attain their respective ages of twenty-one years, and as to females, when and as they respectively shall attain that age, or be married; So as nothing hereinbefore contained shall give or confer any share or claim to the issue of any child of the said intended marriage who shall be or become entitled as aforesaid, unless such child shall be or become an only child; And in case any one or more of the issue of any one or more of the same children shall in the lifetime of both or either of them, the said A. B. and C. D., his intended wife, or within twenty-one years from the death of the survivor of them, depart this life (*a*), as to a male or males, under the

(*a*) This qualification is introduced, for the purpose of keeping the limitation within the rule against perpetuities, which prohibits limitations beyond a life or lives in being, (under which is comprehended a child en ventre sa mère), and twenty-one years afterwards. Vide *Cadell* v. *Palmer*, 7 Bli. 202, (N.S.); 10 Bing. 14; 10 Sim. 173. This case decides that the term of twenty-one years is without reference to the infancy of any person whatever. As to the question, whether a limitation by way of executory devise is void, as too remote, or otherwise, if it is not to take effect until after the determination of a life or lives in being, and upon the expiration of a term of twenty-one years afterwards, together with the number of months equal to the ordinary or longest period of gestation, but the whole of such years and months to be taken as a term in gross, and without reference to the infancy of any person whatever, born en ventre sa mère?—The unanimous opinion of the Judges was, that such a limitation would be void, as too remote. They considered twenty-one years as the limit, and the period of gestation to be allowed in those cases only in which the gestation exists.

age of twenty-one years, and as to a female or females, under that age and without having been married, leaving a brother or brothers, sister or sisters, Then as to the original, and also any additional or surviving share or shares of the male or female issue so dying, and the accumulations and savings of interest thereon, In trust for his, her, or their brother or sister, or brothers or sisters, to be equally divided between them, if more than one, share and share alike, as tenants in common and not as joint-tenants, and to be payable &c.

Of funded property for four children equally for life, and to daughter, if married, to her separate use, and for issue of children dying, with benefit of survivorship, and cross remainders between the four children. (In wills).

CLVI. And I direct, that after the determination of the said several annuities, my said trustees, and the survivors and survivor of them, his executors and administrators, do and shall stand possessed of and interested in all the said trust monies, stocks, funds, and securities, Upon the trusts hereinafter declared; (that is to say), to pay and divide the interest, dividends, and income thereof, In trust for my four children equally between them, share and share alike; the share of each of them to continue during his or her natural life, and the share of my said daughter to be for her sole use and benefit, separate and apart from and independent and exclusive of any (*a*) husband or husbands with whom she may from time to time intermarry, and so that the same share, or any part thereof, may not be subject or liable to his debts, management, or control, and so that she may not anticipate, charge, incumber, or assign the growing payments thereof, and so that the receipt of my said daughter alone shall be a good and sufficient discharge to my said trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, for the same share; And on the death of each of my said children, I direct that the share of trust monies, stocks, funds, and securities, in which that child is to have a life interest, shall be held In trust for the child or all the children of that child respectively, to be equally divided between such my grandchildren if more than one, share and share alike, and the respective executors, administrators, and as-

(*a*) Vide Vol. I. book iii. chap. vi. vii.

signs of the same grandchildren; the share of each grandchild, being a male, to be paid to him at his age of twenty-one years, or being a female, at her age of twenty-one years, or day of marriage, which shall first happen; and in case any one or more of the same grandchildren, being males, shall depart this life under the age of twenty-one years, or being females, shall depart this life under that age and without having been married, then the original part or share, and also any additional part or share of each grandchild so dying shall be held, In trust for his or her brother or sister, brothers or sisters, to be divided between them, if more than one, in equal shares, as tenants in common, and his, her, and their executors, administrators, and assigns; And in case any or either of them my said four children shall die, without having had any child, or in case the child, if only one, or all the children, if more than one, of any one or more of my said four children being males, shall depart this life under the age of twenty-one years, or being females, shall depart this life under that age and without having been married, then the share of each or either of my said four children so dying, or of whose issue there shall be such failure as aforesaid, and also any additional share or shares to be from time to time taken under this present limitation, shall be held on the same trusts, and with the same limitations over, as are declared of the original shares of the other or others of my said four children, and by way or in the nature of cross-remainders; and if there shall not be any child of either of my said four children, or if the child, if only one, or all the children, if more than one, of each of my said four children being males, shall depart this life, under the age of twenty-one years, or being females, shall depart this life under that age and without having been married, Then &c.

Of monies for several persons (children or others) in equal shares, but so that sums advanced to two of those persons may be taken

CLVII. Upon trust that the said trustees &c., do and shall pay and apply the said monies unto or between and among the said A. B., C. D., E. F., &c. respective executors, administrators, and assigns, in the shares and proportions hereinafter mentioned, that is to say, the same monies to be divided into nine parts or shares, and

as part of their shares.

the said sum of £——, which hath been paid and advanced to the said A. B. as aforesaid, to be taken and considered as part of his portion or share, and the said sum of £——, which hath been paid and advanced to the said C. D. as aforesaid, to be taken and considered as part of his portion or share; and inclusive of the said sum of £——, as part of the share of the said A. B., and the said sum of £——, as part of the share of the said C. D., all the said shares to be of equal amount: each of them the said A. B., C. D., E. F., &c. respectively, to take or be entitled to one of the said shares, and the said G. H. and I. K. to take or be entitled to the remaining share equally between them as tenants in common.

Of Exchequer annuities. (In wills).

For daughter during so many years as she shall live of the term for which annuities shall be payable.

In case of daughter's death during such term, in trust for her children.

CLVIII. And as to the annual sum of £——, part of the said £—— Long Annuities, do and shall pay the same to, and permit the same to be received by my daughter A. B. and her assigns, during so many years as she shall live of the term for which the said annuity shall be payable; And in case she shall depart this life during the term for which the said annuities are payable, Do and shall stand and be possessed of and interested in the said last-mentioned annual sum of £——, part of the said £—— Long Annuities; In trust for all and every the child and children of my said daughter A. B., who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain that age or marry, and their respective executors, administrators, and assigns, to be divided between or amongst such children, if more than one, in equal shares and proportions as tenants in common; And in case there shall be only one child of my said daughter A. B., who being a son shall attain the age of twenty-years, or who being a daughter shall attain that age or marry, Then as to the whole of the said annual sum of £——, In trust for such only child, his or her executors, administrators, or assigns; But if my said daughter A. B. shall have no child, who, being a son, shall attain the age of twenty-one years, or who, being a daughter, shall attain that age or be married, Then do and shall, from and immediately after her decease, and such failure of issue of her

body as aforesaid, stand and be possessed of and interested in the said last-mentioned annual sum of £——, part of the said annual sum of £—— Long Annuities, Upon and for such trusts, intents, and purposes as I have hereinbefore declared of and concerning the first hereinbefore mentioned annual sum of £——, part of the same Long Annuities, or such of the same trusts, intents, and purposes as shall be then subsisting undetermined, and capable of taking effect.

In default, upon the trusts before declared.

CLIX. I give and bequeath unto my said sons, A. B., C. D., and E. F., the sum of £——, Upon trust that they the said A. B., C. D., and E. F., or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, Do and shall lay out and invest the same in their or his names or name in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales; And do and shall from time to time (if they or he in their or his discretion shall think fit) alter, vary, and transpose the said stocks, funds, and securities, as to them or him shall seem proper; And do and shall, during the life of my daughter G. H., the wife of I. H., pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, unto such person or persons only, and for such intents and purposes only as my said daughter G. H. shall from time to time, by writing under her hand, direct or appoint; And in default of such direction or appointment, into her own hands, for her own separate and peculiar use, exclusively of her present or any future husband, and without being in any wise subject to his debts, control, interference, or engagements; And the receipts in writing of the said G. H. (whether she shall be single or married) to be sufficient discharges for the same. And in case the said G. H. shall depart this life in the lifetime of the said I. H., Do and shall, from and immediately after her decease, and thenceforth during the life of the said I. H., pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities unto, or permit the same to be received by the said I. H. and his assigns, for his and their own proper use and benefit;

Trusts of legacy. (In wills).

To invest legacy and vary securities.

To pay interest during daughter's life, according to her appointment.

In default of appointment, to her separate use.

In case of daughter's death in the lifetime of her husband, in trust for husband for life.

After the decease of survivor, for children of wife, as husband and wife shall appoint.

And from and immediately after the decease of the survivor of them the said I. H. and G. his wife, do and shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, In trust for all and every, or such one or more, exclusively of the other or others of the child or children of the said G. H., now born and hereafter to be born, at such time or times, and if more than one, in such shares, and for such estate or estates, interest or interests, as the said I. H. and G., his wife, by any deed or deeds, with or without power of revocation, to be by them sealed and delivered in the presence of and to be attested by two or more credible witnesses, from time to time jointly shall appoint; And in default of such joint appointment, and so far as every or any such joint appointment, if incomplete, shall not extend, then, as the survivor of them the said I. H. and G., his wife, shall, by any deed or deeds, with or without power of revocation, to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, or any writing in the nature of or purporting to be a will or codicil, to be by him or her signed in the presence of and attested by two or more credible witnesses, appoint; and in default of such appointment, and so far as every or any such last-mentioned appointment, if incomplete, shall not extend, In trust for all and every the child and children of the said G. H., now born and hereafter to be born, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between such children (if more than one) in equal shares, as tenants in common and not as joint-tenants; and if there be but one such child, the whole to be in trust for that one child, his or her executors, administrators, or assigns; But no child taking under any appointment to be made in exercise of the aforesaid powers, or any of them, shall be entitled to any share of the unappointed part of the said trust monies, stocks, funds, and securities, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; And if there shall be no child or children of the said G. H., who shall, under or by virtue of the trusts

In default, as survivor shall appoint by deed or will.

In default, for children of wife equally.

Hotchpot clause.

In default of children, for wife, in case she

become entitled to an absolute interest in the said trust monies, stocks, funds, and securities, the said trust monies, stocks, funds, and securities shall be upon the trusts following; (that is to say), In case the said G. H. shall survive the said J. H., then In trust for the said G. H., her executors, administrators, and assigns; but in case the said J. H. shall survive the said G. H., then the same shall be In trust for such person or persons, and to and for such intents and purposes as the said G. H. shall by her last will and testament in writing, or any codicil or codicils thereto, or by any writing or writings in the nature of or purporting to be a will or codicil, to be by her signed in the presence of and to be attested by two or more credible witnesses, direct, limit, or appoint; And in default of such last-mentioned appointment, In trust for the next of kin of the said G. H. exclusively of the said J. H. (*a*).

shall survive her husband.

But in case husband shall survive, as wife shall by will appoint.

In default of appointment, for wife's next of kin, exclusive of husband.

CLX. Upon trust that they the said A. B. and C. D. &c., in case the said E. F. shall not then have attained his age of twenty-one years, do and shall, during the minority of the said E. F., pay and apply the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, or such part thereof as they or he shall deem sufficient, unto and for the benefit of the said E. F. and G. F., for and towards their maintenance and education, equally to be divided between or among them; And do and shall suffer the residue (if any) of the same interest, dividends, and annual produce to accumulate in the way of compound interest, for the benefit of the person or persons who shall ultimately become entitled to the fund from which the same

For maintenance and education of minor.

To suffer residue to accumulate for the benefit of person who shall be ultimately entitled to the fund.

(*a*) If legacies are given in addition to what the legatees shall be entitled to under testatrix's marriage settlement, add the following declaration:

"And I declare that the legacy or sum of £——, and also the two sums of £——, each hereinafter bequeathed by me in favour of my daughters, Caroline and Harriet, are intended by me to be in addition to what my said daughters may be entitled to under the settlement made on my marriage with my late husband."

After minor's majority, for maintenance of his sister whilst a minor and unmarried; residue to accumulate as before.

shall have proceeded. But if the said E. F. shall have then attained the age of twenty-one years, do and shall from thenceforth, or from and immediately after the determination of the minority of the said E. F., in case the said G. F. shall be then under the age of twenty-one years, and shall not be or ever have been married, during the minority, or until the marriage of the said G. F., pay and apply the said interest, dividends, and annual produce, or such part thereof as they or he shall deem sufficient, unto and for the sole benefit of the said G. F., for and towards her maintenance and education; and do and shall suffer the residue (if any) of the same interest, dividends, and annual produce, to accumulate in the manner and for the benefit of the person or persons hereinbefore mentioned. Provided always, that in case either of them the said E. F. and G. F. shall depart this life under the age of twenty-one years, the said A. B. and C. D. shall pay and apply the said interest, dividends, and annual produce, or such part thereof as they or he shall deem sufficient, for or towards the maintenance and education of the said E. F., in case he shall survive the said G. F. during his minority, or for and towards the maintenance and education of the said G. F., in case she shall survive the said G. F., during her minority, or until she shall be married, and do and shall permit and suffer the residue (if any) to accumulate in manner hereinbefore mentioned. And the said I. K., in further pursuance of the said power and authority, doth hereby, in manner aforesaid, direct and appoint, that from and immediately after the determination of the respective minorities of the said E. F. and G. F., or in case the said E. F. shall have attained the age of twenty-one years, and the said G. F. shall be or have been married, then that they the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, do and shall stand and be possessed of the said trust monies, stocks, funds, and securities, in trust for the said E. F. and G. F., in equal shares and proportions, as tenants in common; but if the said E. F. shall die under the age of twenty-one years, leaving the said G. F. him surviving, or in case the said G. F. shall die under the age of twenty-one years, and without having been married, leaving the said E. F. her surviving,

Upon majorities or majority and marriage, in trust for the brother and sister as tenants in common; in default, as to either, for survivor.

then that they the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, do and shall stand and be possessed of the whole of the said trust monies, stocks, funds, and securities, in trust for the survivor of the said E. F. and G. F.; And in case the said E. F. shall depart this life under the age of twenty-one years, and the said G. F. shall die under that age, without having ever been married, then that they the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, do and shall stand and be possessed of the said trust monies, stocks, funds, and securities, In trust for the absolute use and benefit of the said L. M., his executors, administrators, and assigns.

Ultimate remainder to another person.

CLXI. Upon this further trust, that in case all, any, or either of my said younger sons A., B., C., and D., and my daughter E., shall not have attained the age of twenty-one years in the lifetime of my said wife, my said trustees and trustee for the time being do and shall pay and apply the interests, dividends, and income of the said trust monies, stocks, funds, and securities, or so much thereof as from time to time shall not be payable to such of my said younger children respectively, as should have attained that age, under the trusts hereinafter contained, in and towards the maintenance, education, and advancement of such children respectively, during his, her, or their minority or respective minorities, at such times and in such manner and proportions as they my said trustees or trustee shall in their or his discretion consider fit and expedient; And in case there shall at the end of any year be any part of such interest, dividends, or income, remaining in the hands of my said trustees or trustee, not applied as aforesaid, Upon trust that they shall invest the same in or upon some such stocks, funds, and securities, as aforesaid, in the names of my said trustees or trustee for the time being; Upon the same trusts, and to and for the like ends, intents, and purposes, as are hereinbefore and hereinafter expressed and declared, of and concerning the said trust monies, stocks, funds, and securities, from which the same accumulations shall arise.

To give maintenance to children (after wife's decease), during their minorities, without reference to their particular shares. (In wills).

For providing a certain income for the daughter while unmarried, by the appropriation of a sum of money.

CLXII. And upon this further trust, that in case my said daughter E. shall not have married in the lifetime of my said wife F., or after her death, and before my said daughter shall have attained her age of twenty-one years, my said trustees and trustee do and shall as soon as conveniently may be after the decease of my said wife, or, which shall last happen, after my said daughter E. shall attain her age of twenty-one years, appropriate and set apart so much or such part or share of the said trust monies, stocks, funds, and securities, as at the time of such appropriation shall produce a clear annual sum of £—— of lawful money of Great Britain, and do and shall stand possessed of and interested in the same part or share, Upon trust that my said trustees and trustee for the time being do and shall from time to time, until my said daughter E. shall attain the age of forty years, or be married, or depart this life under that age, permit and suffer, or authorize and empower my said daughter to receive and take all the dividends, interest, and income of the said part or share; and if my said daughter shall attain the age of forty years without having been married, then do and shall pay, transfer, and assign the said part or share of and in the said trust monies &c. unto my said daughter E., her executors, administrators, and assigns, for her and their own absolute use and benefit. But if my said daughter E. shall depart this life or be married under the age of forty years, then it is my will, and I hereby direct that the said part or share of and in the said trust monies &c., which shall have been appropriated or set apart as aforesaid, shall fall into and become part of the residue of my said personal estate, and shall be held upon the trusts next hereinafter declared concerning the same.

TITLE VIII.

OF POWERS.

I. He the said A. B. hath made, nominated, constituted, and appointed, and in his place and stead put, and by these presents doth make, nominate, constitute, and appoint, and in his place and stead put C. D. of &c., to be his true and lawful attorney, in the name of him the said A. B., or in the name of him the said C. D., to let, release, mortgage, exchange, make partition of, and absolutely sell and dispose of all and every the messuages, lands, tenements, hereditaments, and real estate whatsoever, freehold, copyhold, or leasehold, or of what tenure soever, of or in which the said A. B., or any person or persons in trust for him, have or hath or may during his absence have any estate or interest whatsoever, in possession, reversion, remainder, or expectancy or otherwise. *And also*, in the name of him the said A. B., or in the name of him the said C. D. or otherwise, to ask, demand, recover, and defend, and to use, take, commence, and prosecute all and every or any legal or equitable means, cause, action, suit, or expedient, for recovering or defending the right to or possession of any of the said messuages, tenements, or hereditaments. *And also*, to ask, demand, recover, receive, collect, and get in, sell out, alter,

General power of attorney on leaving England (*a*).

To let, release, mortgage &c., and sell landed property.

To defend the right to and possession of it.

To collect money, and bring actions, and give discharges.

(*a*) "Whereas the said A. B. intends shortly to leave this kingdom, to join his regiment in India, and is desirous that during his absence his real and personal estate, and all other his concerns in England, should be managed and conducted in the same manner and with the same uncontroulable power and discretion, and as effectually to all intents and purposes whatsoever, as if he was actually present to manage and conduct the same."

vary, and dispose of, and to use, take, commence, and prosecute all and every or any legal or equitable means, cause, action, suit, or expedient, for the recovering or defending and receiving of all or any of the money, and securities for money, goods, chattels, rents, arrears of rent, fines, legacies, annuities, debts on mortgage, judgment, specialty, simple contract, or of any other nature, money in the funds, or any other stocks, public or private, and other personal estate and effects of or to which he the said A. B., or any person or persons in trust for him, is, are, or shall be possessed or entitled now, or at any time during his absence, for any estate or interest whatsoever; And upon the receipt thereof, or of any part or parts thereof, receipts, acquittances, and other sufficient and effectual discharges to make, sign, seal, and deliver, and apply the moneys to be received by all or any of the ways and means aforesaid, as he shall think proper, in full payment or discharge of his expenses in the premises subject thereto, for the benefit of the said A. B., his executors, administrators, or assigns; And also to adjust, liquidate, and finally settle any account or accounts now open, and depending or remaining unsettled between the said A. B. and any person or persons whomsoever, or to receive or pay such balance or balances as upon the settling of such account or accounts shall appear to be due to or from the said A. B., as the case may be; and also to compound, compromise, and submit to arbitration, conclude, or agree any debt or debts, sum or sums of money due and owing to or from the said A. B., or from or to any person or persons whomsoever, or any other claim, demand, dispute, difference, or controversy, subsisting or depending, or to arise between the said A. B. and any person or persons whomsoever; And for that purpose, and for and on behalf of the said A. B., and in his name, or in the name of the said C. D., as he shall think fit, to enter into, sign, seal, execute, and deliver, one or more bond or bonds of arbitration, or instrument or instruments of submission, and to stand to, obey, abide by, and perform the award, order, or arbitration, or awards, orders, or arbitrations of such arbitrator or arbitrators, as shall be thereby appointed; and to make, sign, seal, and execute all other lawful acts, deeds, matters, and

To settle accounts.

To enter into bonds of arbitrator.

things, as may be thought necessary or expedient, in or about the premises, or any of them; and for all or any of the purposes aforesaid, to appoint one or more attorney or attornies, clerk or clerks, agent or agents, under him, with such salary, fees, or recompense as he shall think fit, and to revoke, alter, and vary, every or any such nomination or appointment at his or their pleasure; and generally to do and perform all acts, deeds, matters, and things, in and about the real and personal estate and effects of the said A. B., as fully and effectually, to all intents and purposes whatsoever, as he the said A. B. could or might himself do if personally present and acting therein, if these presents had not been executed; he the said A. B. hereby ratifying, allowing, and confirming, and agreeing to ratify, allow, and confirm, all and whatsoever he the said C. D. or his substitute or substitutes shall do or cause to be done in or about the premises, or any of them.

To appoint attornies, and give salaries.

General confirmation by donor of power.

II. He the said A. B. hath made, ordained, constituted, and appointed, and by these presents doth make, ordain, constitute, and appoint, the said E. F. his true and lawful attorney, for him and in his name to accept and take

Of attorney to complete the purchase of an estate, and afterwards for the management thereof (*a*).

(*a*) "Whereas the said A. B. is about to leave this kingdom, to command her Majesty's fleet in the Mediterranean Sea. And whereas the said A. B. hath entered into certain articles of agreement, bearing date &c., with the reverend C. D. of &c., for the purchase from him the said C. D. of &c., with the appurtenances, and the impropriate rectory of A., and the advowson of the vicarage of B., and divers messuages, farms, lands, tenements, tithes, and hereditaments, situate, lying, and being or arising in the parishes of &c., in the county of &c.; and the timber on the said estates, at the price of £——; and also for the purchase from him the said C. D. of the great tithes of certain lands in the parishes of ——, in the same county, (used as glebe lands of the said vicarage of B.), at the same price at which the same have been contracted to be purchased by the said C. D. And whereas the said contract will not be completed before the

of and from the said C. D., and all other necessary parties, such conveyances or assurances in the law of the said manors, rectory, advowson, messuages, farms, lands, tenements, tithes, and hereditaments hereinbefore mentioned, and so contracted to be purchased by him the said A. B. as hereinbefore mentioned, as counsel shall advise and approve of, either to the use of the said A. B., his heirs and assigns, or to such uses and in such manner as shall be thought fit; and also for him and in his name and as his act and deed, to sign, seal, and deliver such conveyances or assurances which it may be thought proper or necessary for him the said A. B. to sign, seal, and deliver as a directing party or otherwise howsoever; and after completion of the said contract, and execution of such conveyance and assurance as aforesaid, or at any time sooner or otherwise, as occasion may require, for him the said A. B. and in his name to enter into and upon, and to take possession of the said manors &c., or any of them in the name of the whole, or otherwise; and also from time to time to ask, demand, sue for, levy and recover, receive and take, (by all lawful ways and means whatsoever), of and from all and every the present and future tenants or occupiers of the said manors &c., or such other persons as are or may be liable to pay the same, all or any of the rents, issues, and profits of the said premises, and every or any part thereof, from the time or times at which the said A. B. shall be entitled to receive such rents and profits, according to the terms of the contract entered into by him for the purchase of the said premises as aforesaid; And upon nonpayment of such rents, issues, and profits, or any part thereof (so being demanded), to enter and distrain for the same upon the hereditaments and es-

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said A. B. shall have sailed for his said command, and he is desirous of appointing his eldest son E. F., Esq. (a captain in the Royal Navy), his attorney, to act for him in all matters relative to the completion of the said purchase, and to the taking possession and managing the said estate, during the absence of him the said A. B. in the manner hereinafter mentioned."

tates liable thereto; and the distress and distresses then and there found, to take, lead, drive, carry away, and impound, and in pound to detain or keep, or otherwise to sell and dispose of the same, as landlords are at law entitled to do for the recovery of rent in arrear; or otherwise to commence and prosecute any action or actions, suit or suits, in any courts of law or equity, for recovering such rents or arrears of rents, issues, and profits, or any part thereof, or for recovering, receiving, and getting possession of the said manors &c., or any sum or sums of money for or in respect thereof, or of any part thereof; and such actions or suits respectively to prosecute and follow up, or discontinue or become nonsuit therein, as he the said E. F. shall think proper; and upon receipt of any sum or sums of money on account of such rents or arrears of rents, issues, and profits as aforesaid, or otherwise, for him the said A. B., and in his name, to sign and give any effectual receipt and discharge, or receipts and discharges for the same; all which receipts and discharges shall be as valid and effectual in the law to all intents and purposes as if the same had been actually signed and given by the said A. B. in his own person; and also for and in the name of him the said A. B., and as his act and deed, from time to time to grant, make, sign, seal, and execute any lease, leases, or agreement for lease or leases of the said premises, or any part or parts thereof, to any person or persons, for any term or number of years, and at and under such rents, and subject to such covenants, conditions, and agreements, as he the said E. F. shall think fit and reasonable; and also to accept surrenders of any lease or leases subsisting, or which shall or may be subsisting of and in the same premises, or any part or parts thereof, and to merge and destroy such leases, and thereupon to give and execute to the lessee or lessees therein any release or releases of and from the covenants contained in any such lease or leases, if the said E. F. shall think it expedient or proper, or for the benefit of the said A. B., so to do; and also from time to time, in the name of the said A. B., to enter into and upon, and inspect and survey the estate and hereditaments, or any part or parts thereof, and to view, search, and see the state and condition thereof, and the defects and wants of repairs

of or upon the same, and of or in the buildings and farms, and the hedges, ditches, and fences thereof, and to repair, and give notices, orders, and directions, and to employ proper workmen to repair the same premises in such manner as may be necessary or proper; and also from time to time to fell and cut down any woods or underwoods, timber, or other trees standing, being, or growing on any of the said lands which are proper to be cut down and felled, and to sell and dispose thereof, or to allow any of the present or future tenants of the said premises such timber as the said E. F. may think proper for repairs or otherwise in or about the said premises; and also for him the said A. B., and in his name, and as his act and deed, in due form of law, to nominate and appoint some person or persons to be a gamekeeper or gamekeepers in or upon the said manors of &c., or either of them, with all such privileges, indemnities, and appurtenances as to such appointment of a gamekeeper or gamekeepers do belong or appertain; and any person or persons so appointed at any time or times afterwards to displace or remove, and thereupon to appoint any other person or persons to be a gamekeeper in his or their place or stead, and so from time to time to displace, remove, or appoint any gamekeeper or gamekeepers as often as he the said E. F. shall think fit; and generally to do or cause to be done all acts, matters, and things whatsoever, for, in, or about the completion of the said contract entered into by the said A. B. for the purchase of the said premises, and for taking possession of, and letting and managing the same, and receiving the rents and profits thereof, as to him the said E. F. shall seem fit or necessary; and for all or any of the aforesaid purposes to bring, commence, or institute any actions, suits, or other proceedings whatsoever, at law or in equity, and the same to prosecute and follow up to judgment and final process, or to discontinue or become nonsuit therein when and as he shall think fit or be advised; and in any such actions, suits, or proceedings, or otherwise, for the purposes aforesaid, or in any transactions, matter, or thing relating thereto, to use or sign the name of the said A. B.; and the said A. B. doth hereby authorize and empower the said E. F. in his own name to constitute and appoint any person or persons

to act under him as his attorney or attornies, deputy or deputies, for all or any of the purposes aforesaid, or for or in any transaction, matter, or thing; and to give and delegate to such attorney or attornies, deputy or deputies, all or any of the powers or authorities hereby given to him the said E. F., or intended so to be; and any person or persons so appointed as last mentioned at any time or times afterwards to remove and displace, and any other person or persons in his or their place or stead to constitute and appoint, and so from time to time to remove any such attorney or deputies so to be appointed as aforesaid, and others to appoint in their place and stead, as often as he the said E. F. shall think it expedient so to do; and he the said A. B. doth hereby ratify and confirm, and covenant and agree that he will ratify and confirm all and whatsoever the said E. F. shall lawfully do or cause to be done in or about the premises by virtue of this power.

Of attorney to receive purchase-money, to compound for defects of title or error in description or quantity of premises; to compel specific performance of contract, &c.

III. And it is hereby agreed and declared, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor; and the said E. F. and G. his wife do, and each of them doth by these presents, in their stead and place put and depute them and him respectively in their or his names or name, or in the name of the said E. F. and G. his wife, or either of them, to ask, demand, sue for, recover, and receive of and from all persons liable or entrusted to pay the same, the purchase money for which the share and interest of which the said G., the wife of the said E. F., was seised, or to which she was in any wise entitled at the time of the execution of the hereinbefore recited articles, and of her marriage with the said E. F., of and in the said hereditaments and premises comprised in the said contracts respectively, hath been contracted to be sold, or such part thereof as hath not been already paid, and also all interest, if any, which may become payable in respect of the same, or any part thereof; and on non-payment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action or actions, suit or suits, or other proceeding or proceedings whatsoever, for recovering or ob-

taining the payment of the same, as they or he shall think proper; and also, if occasion shall seem to them or him to require, with such consent as aforesaid, to compound with the purchaser or purchasers, or any of them, for any defects or alleged defects in the title, or any error or deficiency in the description or quantity of the lands, estates, or premises so sold, or to be sold or otherwise, or to compel a specific performance of the said contracts respectively, or any of them, by such lawful or equitable means as to them or him shall seem proper; and generally to do and execute any other act, deed, matter, or thing whatsoever relative to the receipt or recovery of the said money, or any part thereof respectively, or to the said contracts, or any or either of them, as fully to all intents and purposes as the said G. F. could or might have done in her own proper person, in case the said articles or these presents had not been executed, and the said marriage had not been solemnized. And it is hereby agreed and declared between and by the said parties to these presents, that the receipt or receipts in writing of the said A. B. and C. D., or the survivor of them, his heirs, executors, administrators, or assigns respectively, for any sum or sums of money payable to them or him under or by virtue of these presents, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the same respectively, or so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in any wise bound or concerned to see to the application of the money mentioned and acknowledged to be received.

Of attorney to give and to receive seisin.

IV. And the said A. B., C. D., and E. F. have, and each and every of them hath nominated, constituted, and appointed, and by these presents do, and each and every of them doth nominate, constitute, and appoint the said G. H., I. K., and L. M., their and each of their lawful attornies for them, and each, any, or either of them, and in their, and every or any of their names respectively, to enter into and

take full, quiet, and peaceable possesssion and seisin of all and singular the aforesaid messuage or tenement, tofts, lands, hereditaments, and premises, or some part thereof, in the name of the whole, and then to deliver full, peaceable, and quiet possession and seisin thereof, in the name of the whole, to the said N. O., or to his attorney or attornies lawfully authorized, according to the form, effect, and true intent and meaning of these presents; And the said N. O. hath nominated, constituted, and appointed, and by these presents doth nominate, constitute, and appoint the said P. Q. his true and lawful attorney, for him, and in his name and stead, to receive and take of and from the said G. H., I. K., and L. M., or any or either of them, either in person or persons, or by his or their attorney or attornies lawfully authorized in that behalf, possession and seisin of all and singular the aforesaid messuage or tenement &c., and premises, or of some part thereof, in the name of the whole, and such possession and seisin so taken thereof, To hold and to keep, to the use of the said N. O., his heirs and assigns, according to the effect, true intent, and meaning of these presents.

Of attorney to give and receive seisin. (Another form).

V. And this Indenture also witnesseth, that, for the better execution of these presents, the said A. B., C. D., and E. F., have, and each and every of them hath made, ordained, constituted, and appointed, and by these presents do, and each and every of them doth make, ordain, constitute, and appoint G. H., of &c., and H. H., of &c., or either of them, jointly and severally, their true and lawful attornies or attorney for them, and in their name, place, and stead, to enter into the said messuage and other hereditaments hereinbefore granted and enfeoffed, or expressed and intended so to be, or any part or parcel thereof in the name of the whole, and possession and seisin thereof, and every part thereof, in the name of the whole, for and in the names of the said A. B., C. D., and E. F., to have and to take; and after such entry had, and possession and seisin so had and taken as aforesaid, to deliver quiet and peaceable possession thereof, and of every part thereof in the name of the whole, unto the said I. K., or his certain attorney or attornies in that behalf lawfully authorized to take and receive the same, to be had and

holden by the said I. K., his heirs and assigns for ever, and according to the form, tenor, and effect of these presents. And this indenture lastly witnesseth, that, for the better execution of these presents, the said I. K. hath made, ordained, constituted, and appointed, and by these presents doth make, ordain, constitute, and appoint L. M., of &c., and N. O., of &c., and either of them, jointly and severally, his true and lawful attorney or attornies, for him, and in his name, place, and stead, to accept, receive, and take seisin of the said messuage and other hereditaments hereinbefore granted and enfeoffed, or expressed and intended so to be, or any part thereof, of or from the said A. B., C. D., and E. F., or their attorney or attornies, to hold the same unto and to the use of the said I. K., his heirs and assigns, and according to the tenor and effect of these presents. And the said I. K. doth hereby agree to ratify and confirm and allow all the matters and things whatsoever which his said attorney or attornies, or either of them, shall lawfully do or cause to be done, by virtue of these presents (*a*).

Of attorney to register deeds in the island of Grenada.

VI. And to the intent that these presents, and the lease for a year whereon the same are grounded, may be duly recorded and registered, and take effect according to the laws of the said island of Grenada, the said A. B. and C. D. do and each of them doth by these presents make, constitute, and appoint, and in their and each of their place and stead respectively put E. F., G. H., and I. K., all of the island of Grenada, jointly and severally to be their and each

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Memorandum of livery of seisin.

(*a*) *Memorandum.*—Be it remembered that on this —— day of ——, 18—, peaceable and quiet possession of the messuage and other hereditaments within mentioned was taken and had by the within-named G. H., for and in the name and as the attorney of the within-named A. B., C. D., and E. F., and by the said G. H. delivered to the said L. M. and N. O., as the attornies of the within-named I. K., To hold unto and to the use of the said I. K., his heirs and assigns for ever, and according to the form and effect of the same indenture, in the presence of us, &c. &c.

of their lawful attorney and attornies, for them and each of them, and in their and each of their names and name, to appear before the secretary or registrar of the said island of Grenada, or his lawful deputy, or any other proper officer of the said island, to acknowledge these presents and the said lease for a year to be the acts and deeds of them the said A. B. and C. D. respectively, and the names and seals hereunto and to the said lease for a year subscribed and affixed to be their respective hand-writing and seals; and further to do and perform every or any other act, matter, or thing whatsoever in such cases used and accustomed, or which shall be requisite or advisable for making these presents, and the said lease for a year valid and effectual in the law, according to the true intent and meaning thereof.

Of attorney to acknowledge Jamaica deeds to be inserted in the conveyance of lands in that island.

VII. And to the intent that these presents, and the lease for a year whereon the same are grounded, may be duly acknowledged, recorded, and registered, and take effect according to the laws, usage, and custom of the said island of Jamaica, and for the other purposes hereinafter mentioned, the said several persons, parties hereto, have, and each and every of them hath made, ordained, constituted, and appointed, and by these presents do, and each and every of them doth make, ordain, constitute, and appoint, and in their and each of their place and stead respectively put the said A. B. and C. D. (*a*), jointly and separately, to be their and each and every of their true and lawful attornies and attorney, for them and each of them, and in their and each of their names and name to appear in any court, or before any judge, registrar, or other proper officer of the said island of Jamaica, to acknowledge these presents, and the lease for a year whereon the same are grounded, to be the act and deed, and acts and deeds of them the said parties to these presents, and to the said lease for a year respectively, and the names and name, seals and seal hereunto and to the said

(*a*) It is neither necessary nor usual to make the attornies parties to the deed. Vide Vol. I. book ii. chap. 1, "Of Parties." Recital-Book, Introd., art. 8, p. 12.

lease for a year subscribed and affixed, to be their respective hand-writing and seals; and further to do and perform all or any act, matter, or thing, in such cases used and accustomed, or which shall be requisite or advisable for making and rendering these presents, and the lease for a year whereon the same are grounded, valid and effectual in the law, according to the true intent and meaning of the same, and to indorse upon or annex to these presents a schedule or schedules, containing a full and particular description of the lands hereby released and assigned respectively, [and the names, qualities, and other description of the negroes and slaves thereupon or belonging thereto] (*a*).

Of attorney to record and register deeds in the commonwealth of Virginia.

VIII. And the said A. B. doth hereby further empower and authorize the said C. D. and E. F., of the city of Richmond, in the commonwealth of Virginia, merchant, and G. H., of the same city, merchant, either together or severally, and the survivors and survivor of them, and the executors and administrators of such survivor, for and in the name of the said A. B., to appear at any general court to be holden at the capitol in the city of Richmond and commonwealth of Virginia; and then and there for him the said A. B., and in his name, to request that this indenture may be registered, recorded, or inrolled, and to cause or procure the same to be registered, recorded, or inrolled in the same court, or in some other court, according to the law, custom, and usage of the said commonwealth of Virginia; And also for him the said A. B., his heirs, executors, and administrators, and in his and their name and names, to do all and every other act and acts, measures, and things, that shall be requisite or necessary for the registering, recording, or inrolling, or procuring of this indenture to be registered, recorded, or inrolled, or giving validity and effect to the same, either by livery of seisin or otherwise, according to the law, custom, or usage of the said commonwealth of Virginia.

To execute release of claims.

IX. And further, that, upon payment by the said A. B. to the said C. D., his executors, administrators, or assigns,

(*a*) See 2 Bythew. 246, n. (q).

of the said sum of £——, so agreed to be accepted by the said C. D. in satisfaction of the claims and demands of the said C. D., and of the said E. F. and G. H., as executors under the will of the said I. K. against him the said A. B., in respect of the dealings and transactions of the said late partnership firm of, &c., it shall and may be lawful to and for the said L. M. and N. O., and the survivor of them, and the executors and administrators of such survivor, and they and he are hereby required, at the expense of the said trust estate, to make and execute such deed or instrument or deeds or instruments as they or he shall think proper, or as their or his counsel shall advise, for the purpose of releasing and discharging the said A. B., and the estate and effects of the said A. B., from all claims and demands whatsoever of the said C. D., E. F., and G. H. against the said A. B., for or by reason or on account of the partnership dealings of the said late partnership firm of &c., and of and from all sums of money, which, upon the taking of the account directed to be taken by the decree in the said suits so instituted as aforesaid, might, in case the said suits had been any further prosecuted, have been found to be due and owing or payable to the said C. D., or otherwise in relation thereto.

Of attorney in assignment of principal and interest.

X. And for the considerations hereinbefore mentioned, and for the better enabling the said A. B. and C. D., their executors, administrators, and assigns, to recover and receive the said sums of £—— and £——, and interest, and other the premises hereinbefore assigned, or expressed and intended so to be, they the said E. F. and G. H., his intended wife, Do and each of them doth irrevocably make, nominate, constitute, and appoint the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, the true and lawful attornies and attorney of them the said E. F. and G. H., and each or either of them, to ask, demand, recover, and receive the said sums of money, interest, and premises hereinbefore assigned, or expressed and intended so to be, of and from the person or persons liable to pay the same; and in default of payment thereof, or of any part thereof respectively, to bring, commence, and prosecute any action, suit, or other legal proceeding, or to use any other

ways or means for compelling and enforcing payment thereof; and upon receipt of the sums of money, interest, and premises hereinbefore assigned, or expressed and intended so to be, or any of them, or any part thereof respectively, to execute and give a receipt or receipts, or other discharge or discharges for the same; and for all or any of the purposes aforesaid, from time to time to nominate and appoint one or more attorney or attornies under them the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, and to revoke and vary every or any such nomination or appointment, at their or his pleasure; and for all or any of the purposes aforesaid, to use the name or names of the said E. F. and G. H., his said intended wife, and each or either of them; and generally to do, perform, and execute all acts, deeds, matters, and things, in and relating to the premises, as fully and effectually, to all intents and purposes whatsoever, as they the said E. F. and G. H., and each or either of them, might or could do in their, his, or her own proper persons or person, if these presents had not been executed; they the said E. F. and G. H., his said intended wife, and each of them, hereby ratifying, allowing, and confirming, and covenanting and agreeing to ratify, allow, and confirm whatsoever the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, or their or his substitute or substitutes shall lawfully do or cause to be done in or relating to the premises (*a*).

Of attorney in creditor deeds.

XI. And the said A. B., at the request and by the direction of the said several creditors, parties hereto of the —— part, testified as hereinbefore is mentioned, Hath made, nominated, constituted, and appointed, and by these presents Doth make, nominate, constitute, and appoint the said C. D., E. F., G. H., &c., and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, or any three of them, during such time as there shall be more than three his true and lawful attornies and attorney, irrevocably in his name, or in the names of them the said C. D., E. F., G. H. &c., or the survivors or

(*a*) For a shorter form, see Art. xiii.

survivor of them, or the executors, administrators, or assigns of such survivor, or any three of them as aforesaid or otherwise; but upon the trusts hereinafter declared, to ask, demand, and receive of and from all and every the persons or person liable or interested to pay or deliver the same, all the debts, sums of money, goods, personal estate and effects, and premises hereinbefore assigned, or expressed and intended so to be; and in case of nonpayment or nondelivery thereof, or of any part thereof respectively, to bring, commence, and prosecute any action or actions, suit or suits, or any other proceeding or proceedings whatsoever at law or in equity, to recover and enforce the payment and delivery thereof, and of every part thereof respectively, and to adjust and settle any account or accounts between the said A. B. and any other person or persons, upon such terms as they or he shall think fit, and to compound or submit to arbitration any debt or debts owing to the said A. B., and abide by the award thereupon made, and use any lawful means for recovering and getting in the said debts, monies, goods, and premises hereinbefore assigned, or expressed and intended so to be, in such manner as they or he shall think advantageous; and on payment or delivery of the premises hereinbefore assigned, or expressed and intended so to be, or any of them, or any part thereof, or the sums agreed to be taken or awarded on any such adjustment, settlement, composition, or arbitration as aforesaid, to sign and give one or more receipt or receipts, or other discharge or discharges for the same; and for all or any of the purposes aforesaid, from time to time to appoint one or more attorney or attornies, agent or agents, under them and him, and to revoke, alter, and vary any such appointment at their or his pleasure; and for all or any of the purposes aforesaid, from time to time to use the name of the said A. B., and generally to do, perform, and execute all and every such matters and things in and about the premises as they or he shall think most advantageous, as fully and effectually to all intents and purposes as he the said A. B. might or could do if personally present and acting therein, and these presents had not been executed; he the said A. B. hereby ratifying, allowing, and confirming, and agreeing to ratify, allow, and confirm all and whatsoever the said C. D.,

E. F., G. H. &c., or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, or any three of them, (during such time as there shall be more than three trustees), or their or his substitute or substitutes, shall lawfully do or cause to be done in or about the premises.

Of attorney to receive a legacy, &c.

XII. Now know ye, that I the said A. B. [*principal*] have made, deputed, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D. [*the attorney*] of &c., my true and lawful attorney, for me and in my name to ask, demand, sue for, recover, and receive of and from the said E. F. and G. H. [*executors*], or other the person or persons to whom it doth, shall, or may belong to pay the same, the said legacy or sum of £—— so given and bequeathed to me by the said last will and testament of the said C. B., deceased as aforesaid (*a*), together with any interest which may be due for the same; and upon payment of the same, a good, sufficient, and proper release, acquittance, or other discharge for the same, for me and in my name, to make and give, and also for me and in my name, and as my act and deed, to sign, seal, deliver, and execute, if required, a bond or obligation or other security for the repayment of the said legacy, or of a due proportion thereof, in case the estate and effects of the said C. B. shall prove insufficient to discharge the debts and other lawful and prior demands which may be thereafter made thereupon. And upon nonpayment of the said legacy or sum of £——, or any part thereof, or of any interest due in respect thereof, to use, take, commence, and prosecute for me and in my name, all powers, remedies, actions, suits, expedients, ways, and means for the recovering, receiving, and obtaining payment of the same, as fully and effectually, to all intents and purposes whatsoever, as I myself could or might have used, taken, commenced, or prosecuted if personally present, and these presents had not been made; and also from time to time, and at all times, to nominate, substitute, and appoint any attorney or attornies under him the said C. D.

(*a*) For forms of Recitals, see Recital-Book, tit. WILL, Art. 708.

Of attorney to receive sum of money. (Short form).

XIII. And the said A. B., and also the said C. D., her said intended husband (*a*), do, and each of them doth hereby appoint the said E. F. and G. H., and the survivor of them, and the executors, administrators, and assigns of such survivor, their and each of their attornies and attorney, to call in and compel payment of the said moiety of the said sum of £—— and premises, and to give receipts, which shall be effectual discharges for the same; and for these purposes, or any of them, to use the names of the said A. B. and C. D., or either of them.

Another form, to follow the habendum.

XIV. With full power and authority for him or them, as the attorney or attornies, and in the name or names, and as the act and deed or acts and deeds of him the said A. B., his executors, administrators, or assigns, or otherwise, in the name or names of him the said A. B., his executors, administrators, or assigns, to ask, demand, sue for, recover, receive, and give acquittances and discharges (*b*) for the same sum and sums of money respectively, and every of them respectively, and also the money which shall become due on any renewal or other policy of insurance of the same premises; nevertheless, the same sum or sums of money, and the benefits of the said policy or policies, instrument or instruments of insurance, shall be held (*c*) upon, under, and subject to the trusts, and for the ends, intents, and purposes hereinbefore expressed, declared, and contained, of and concerning the

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(*a*) The intended husband is made to join in the letter of attorney, as it is usually thought—whether justly or not this is not the place to inquire—(vide Vol. I. book ii. chap. 1. "Of Parties") that marriage operates as a revocation of the power so far as it proceeds from the wife.

(*b*) If the money assigned is secured on copyholds, add,—

"and acknowledge satisfaction."

(*c*) Or,—

"subject to the same or the like proviso or agreement for redemption of the same policy or instrument as is hereinbefore expressed and contained for redemption of the said messuages &c. hereinbefore released or otherwise assured, or intended so to be."

money to arise or be produced by or from such sale as aforesaid.

Another form.

XV. And with full power and authority, in the names or name of the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, or otherwise, to ask, demand, sue for, recover, and receive the said sums of money and premises hereby assigned, and to give receipts or other effectual discharges for the same.

Of attorney after an assignment of a covenant. (Short form).

XVI. And with full power and authority to and for the said A. B. and C. D., and the survivor of them, his executors and administrators, to use the name or names and act as the attorney or attornies of the said E. F., his executors or administrators, in recovering and enforcing the benefit of the said covenant or covenants, or in obtaining payment of the said sum and sums of money, costs, charges, and damages, and giving acquittances and discharges for the same.

To repurchase hereditaments within a given time, in consideration of transfer of stock.

XVII. And it is hereby provided, declared, and agreed by and between the said A. B. and C. his wife of the one part, and the said E. F. and G. H. of the other part, and it is the true intent and meaning of them and of these presents, that in case the said A. B. and C. his wife, or the survivor of them, at his, her, or their option, shall at any time after the —— day of ——, 18—, and before the —— day of ——, 18—, be desirous of repurchasing the messuages &c. hereby released and appointed or otherwise assured, or intended so to be, for all the estate hereby granted therein, and which shall be then to come and unexpired, and shall by way of consideration for such repurchase transfer the sum of £—— capital stock in the 3 per cent. Bank Annuities unto or into the name or names of the said E. F., his executors, administrators, or assigns, and also transfer the sum of £—— capital stock in the same Bank Annuities unto or into the name or names of the said G. H., his executors, administrators, or assigns; then and in that case the said E. F. and G. H., their executors, administrators, or assigns, shall or will convey and assure the same messuages &c., and all their estate therein, under and by virtue of these presents, To

such uses, upon such trusts, and for such ends, intents, and purposes as the said A. B. and C. his wife, or the survivor of them, shall by any deed or deeds, instrument or instruments in writing, duly sealed and delivered by him, her, or them, in the presence of and attested by two or more credible witnesses, direct or appoint, free from all incumbrances to be in the meantime made, done, or committed by the said E. F. and G. H., or either of them, their or either of their executors, administrators, or assigns; but nothing hereinbefore contained shall extend or be construed to impose on the said A. B. and C. his wife, or either of them, the obligation of making such repurchase, or of being deemed a debtor or debtors for, or liable to repay all or any part of the said sum of £——, or to convert these presents, or the conveyance hereby made, into a security for money, or to give these presents any other construction than a sale with a right or option of repurchasing upon the terms and within the time hereinbefore expressed in that behalf.

To repurchase within a limited time by way of shifting use, with a power to the purchaser to accelerate the period of repurchase by request.

XVIII. Provided always, and it is hereby declared and agreed by and between the said A. B. and C. D., and it is the true intent and meaning of them and of these presents, and the said A. B. doth hereby consent and agree that, subject to the proviso and restrictions hereinafter contained, the said C. D. at any time during his life, or his heirs within —— years from his death, and on giving three calendar months' notice for that purpose to the said A. B., his heirs or assigns, or leaving the same at his or their usual or last place of residence in England, shall have the option and be at liberty to repurchase the said messuage &c. so purchased by the said A. B. as aforesaid, and by these presents limited to the use of the said A. B., his heirs and assigns, subject to the said term of ninety-nine years and twelve days, on payment or tender to the said A. B., his heirs or assigns, or at his or their usual or last place of residence in England, of the sum of £——, at the end of such three calendar months, as and for the price of such repurchase; And for that purpose it is hereby further declared and agreed by and between the said A. B. and C. D., and at the instance and request, and by the direction and appointment of the said A. B. and

money to arise or be produced by or from such sale as aforesaid.

Another form.

XV. And with full power and authority, in the names or name of the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, or otherwise, to ask, demand, sue for, recover, and receive the said sums of money and premises hereby assigned, and to give receipts or other effectual discharges for the same.

Of attorney after an assignment of a covenant. (Short form).

XVI. And with full power and authority to and for the said A. B. and C. D., and the survivor of them, his executors and administrators, to use the name or names and act as the attorney or attornies of the said E. F., his executors or administrators, in recovering and enforcing the benefit of the said covenant or covenants, or in obtaining payment of the said sum and sums of money, costs, charges, and damages, and giving acquittances and discharges for the same.

To repurchase hereditaments within a given time, in consideration of transfer of stock.

XVII. And it is hereby provided, declared, and agreed by and between the said A. B. and C. his wife of the one part, and the said E. F. and G. H. of the other part, and it is the true intent and meaning of them and of these presents, that in case the said A. B. and C. his wife, or the survivor of them, at his, her, or their option, shall at any time after the —— day of ——, 18—, and before the —— day of ——, 18—, be desirous of repurchasing the messuages &c. hereby released and appointed or otherwise assured, or intended so to be, for all the estate hereby granted therein, and which shall be then to come and unexpired, and shall by way of consideration for such repurchase transfer the sum of £—— capital stock in the 3 per cent. Bank Annuities unto or into the name or names of the said E. F., his executors, administrators, or assigns, and also transfer the sum of £—— capital stock in the same Bank Annuities unto or into the name or names of the said G. H., his executors, administrators, or assigns; then and in that case the said E. F. and G. H., their executors, administrators, or assigns, shall or will convey and assure the same messuages &c., and all their estate therein, under and by virtue of these presents, To

such uses, upon such trusts, and for such ends, intents, and purposes as the said A. B. and C. his wife, or the survivor of them, shall by any deed or deeds, instrument or instruments in writing, duly sealed and delivered by him, her, or them, in the presence of and attested by two or more credible witnesses, direct or appoint, free from all incumbrances to be in the meantime made, done, or committed by the said E. F. and G. H., or either of them, their or either of their executors, administrators, or assigns; but nothing hereinbefore contained shall extend or be construed to impose on the said A. B. and C. his wife, or either of them, the obligation of making such repurchase, or of being deemed a debtor or debtors for, or liable to repay all or any part of the said sum of £——, or to convert these presents, or the conveyance hereby made, into a security for money, or to give these presents any other construction than a sale with a right or option of repurchasing upon the terms and within the time hereinbefore expressed in that behalf.

To repurchase within a limited time by way of shifting use, with a power to the purchaser to accelerate the period of repurchase by request.

XVIII. Provided always, and it is hereby declared and agreed by and between the said A. B. and C. D., and it is the true intent and meaning of them and of these presents, and the said A. B. doth hereby consent and agree that, subject to the proviso and restrictions hereinafter contained, the said C. D. at any time during his life, or his heirs within —— years from his death, and on giving three calendar months' notice for that purpose to the said A. B., his heirs or assigns, or leaving the same at his or their usual or last place of residence in England, shall have the option and be at liberty to repurchase the said messuage &c. so purchased by the said A. B. as aforesaid, and by these presents limited to the use of the said A. B., his heirs and assigns, subject to the said term of ninety-nine years and twelve days, on payment or tender to the said A. B., his heirs or assigns, or at his or their usual or last place of residence in England, of the sum of £——, at the end of such three calendar months, as and for the price of such repurchase; And for that purpose it is hereby further declared and agreed by and between the said A. B. and C. D., and at the instance and request, and by the direction and appointment of the said A. B. and

C. D., it is hereby declared and agreed by and between all the parties to these presents, that in case the said C. D. at any time during his life, or his heirs within —— years from his death, and on giving three calendar months' notice for that purpose in manner aforesaid, shall pay or tender or cause to be paid or tendered to the said A. B., his heirs or assigns, or at such his or their usual or last place of abode, the sum of £—— of lawful money of Great Britain, as and for the price of repurchase of the said messuage &c., so limited to the use of the said A. B., his heirs and assigns, as aforesaid; then upon such payment or tender being made, the same messuage &c., with the appurtenances, shall thenceforth remain, continue, and be, and thenceforth these presents, and the conveyance hereby made, shall, as to the same messuage &c., operate and enure to the use of the said C. D., his heirs and assigns for ever, any thing hereinbefore contained to the contrary in any wise notwithstanding. And the said A. B. doth by these presents, for himself, his heirs, executors, and administrators, covenant, declare, and agree to and with the said C. D. and his heirs, that in case such payment or tender shall be made, and the right to make such payment or tender, and to have such option, shall not be forfeited under the proviso hereinafter contained, he the said A. B., his heirs or assigns, on the request and at the costs and charges of the said C. D., his heirs or assigns, shall and will make, do, and execute all such acts, deeds, and assurances as shall be required by the said C. D., his heirs or assigns, for evidencing such payment or tender, and also for releasing, conveying, confirming, or assuring the said messuage &c. so limited to the use of the said A. B., his heirs and assigns as aforesaid, unto and to the use of the said C. D., his heirs and assigns, or as he or they shall direct or appoint; Provided always, and it is hereby further declared and agreed, that in case the said A. B., his heirs or assigns, shall at any time after the —— day of ——, and during the life of the said C. D., or within —— years from his death, give to the said C. D. or his heirs, or leave at his or their usual or last place of residence in England, a notice in writing requiring that the said option shall be exercised, or that the same shall be waived and abandoned, and in that

case the said C. D. or his heirs shall not within —— calendar months after such notice shall be given or delivered to him or them, or left at his or their usual or last place of residence in England, pay or tender, or cause to be paid or tendered, the said sum of £—— to the said A. B., or his heirs, or at his or their usual or last place of residence in England, then from and after the expiration of —— calendar months from the time of delivering or serving the same notice, the said messuage &c. so limited to the use of the said A. B., his heirs and assigns as aforesaid, shall be exonerated and discharged of and from the right or option hereby given to the said C. D. and his heirs, of repurchasing the same; and in that case also the use hereby limited to or directed to arise in favour of the said C. D., his heirs and assigns, shall cease, determine, and be void, to all intents and purposes whatsoever, and the same messuage &c. shall remain, continue, and be to the use of the said A. B., his heirs and assigns, exonerated and discharged of and from all right or option of repurchase, and of and from the use hereby declared in favour of the said C. D., his heirs and assigns, subject nevertheless and without prejudice to the said term of ninety-nine years and twelve days, and the rent reserved on that term. And the said C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, declare, and agree to and with the said A. B., his heirs and assigns, that in case default shall be made in payment, and also in the tender of the said sum of £——, so as to forfeit the said right or option of repurchase, then and in that case he the said C. D., and his heirs, on the request and at the costs and charges of the said A. B., his heirs or assigns, shall or will make, do, and execute all such acts, deeds, and assurances as the said A. B., his heirs or assigns, shall require, for evidencing the forfeiture of the right or option of repurchasing, and releasing or confirming the said messuage &c., to the use of the said A. B., his heirs and assigns, for ever, discharged of the same option, subject nevertheless and without prejudice to the said term of ninety-nine years and twelve days, and the rent reserved thereupon. And it is hereby declared and agreed by and between the said A. B. and C. D., for themselves respectively, and their respective

heirs, executors, administrators, and assigns, that it shall be optional in the said C. D. and his heirs to repurchase the said hereditaments and premises so limited to the use of the said A. B., his heirs and assigns as aforesaid; and that the same hereditaments, or any of them, shall not be liable to be repurchased by the said C. D. or his heirs, at any time, or in any event, or upon any terms, except as hereinbefore is mentioned. And it is hereby further declared and agreed by and between the said A. B. and C. D., that the said sum of £——, to be paid by the said C. D. or his heirs for such repurchase, if the same shall be made, shall not be or be considered as any debt or duty by, from, or on the part of the said C. D. or his heirs, unless or until he or they shall make such repurchase as aforesaid.

For repurchase, if any issue of a marriage prior to a given period, at a given sum; and then a mortgage debt, and its interest, shall be taken in part of the purchase-money.

XIX. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that in case there shall at any time prior to the —— day of ——, 18—, be any issue of the marriage of the said A. B. and C. his wife, then and in that case, and at any time before the —— day of ——, 18—, and while such issue shall be living, the said A. B., his heirs, executors, administrators, or assigns, on three calendar months' notice in writing for that purpose, shall or will repurchase the said messuage, lands, and other hereditaments hereby released, or otherwise assured or intended so to be, with the appurtenances, of and from the said E. F., his heirs, appointees, and assigns, if he or they shall think fit, and require the same, for all the estate or estates hereby conveyed to the said E. F. therein, at the price or sum of £——; and then and in that case the said sum of £——, and the interest thereof, or so much and such part of the same as shall remain unpaid, shall be and be accepted as and for part of the said purchase money, any thing hereinbefore contained to the contrary notwithstanding.

That tenants in common shall have the option of purchasing those shares, which shall be

XX. Provided always, and notwithstanding any of the provisions or trusts hereinbefore declared or contained, It is hereby directed, declared, and agreed, by and between the parties to these presents, that in case any or either of

the said children, born or to be born of the said A. B. and C. D., or his, her, or their heirs, shall at any time during the lives of both or either of them the said A. B. and C. D., or of any one of the said children now born, or twenty-one years from the death of the survivor of them, the said A. B. and C. D., and of their children now born, be desirous and determine to sell his, her, or their part or share, parts or shares of and in the said manor and other hereditaments, then subject nevertheless and without prejudice to the right of each of the same children respectively, his or her heirs, in the meantime to improve his or her share by letting the same at rack-rent or on a building lease or leases, or making any disposition thereof by will, the other or others of the said children, or his, her, or their heirs (being at that time the owner or owners of any other part of the said manor and other hereditaments), shall have the option and be entitled to a preference of purchasing the same share or shares, upon the terms of agreeing and actually offering to pay for the same, within three calendar months, such sum or sums of money as shall be the then value of the share or shares, as such value shall be ascertained by two persons, one to be named by the person or persons intending to sell, and the other or others by the person or persons desirous of purchasing, with a power to such two referees to name an umpire; and further, that in case two or more persons shall have a right to the benefit of the said option, and one or more of them shall decline or refuse to avail himself, herself, or themselves of the same, then the other or others of the same persons shall be solely and exclusively entitled to the benefit of the same option upon the terms hereinbefore expressed, and that till the benefit of the said option shall be waived, or the time for making the same shall be elapsed, the said manor and other hereditaments, and the respective shares thereof, shall remain vested in the person or persons who for the time being shall be the trustee or trustees under and by virtue of these presents, and that the part or parts of the said manor and other hereditaments which shall be purchased from time to time by virtue of the option hereby given, shall be subject to the same or the like option as the original part or share or parts or shares thereof, so long as

sold by any of them.

the right to such option shall continue under and by virtue of these presents.

To jointure.

XXI. Provided always, and it is hereby agreed and declared by and between all the said parties to these presents, That it shall and may be lawful to and for the said A. B., whether he shall or shall not come into and be in the actual possession of the said manor, &c., by virtue of or under the limitations hereinbefore to him made thereof as aforesaid, and either before or after his intermarriage, by any deed or deeds, or instrument or instruments in writing, with or without power of revocation, to be sealed and delivered by him in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament in writing, to be by him signed in the presence of, and to be attested by, two or more such witnesses, to grant, limit, or appoint unto or to the use of any woman or women whom he the said A. B. may hereafter marry (*a*), for her or their life or lives, and in full or in part only for her or their jointure or jointures, and in lieu (*b*) of her or their dower, to take effect after the death of him the said A. B., any annual sum or yearly rent-charge, to be issuing out of, and charged and chargeable upon all or any, or any part of the said manor &c., hereinbefore limited and appointed, granted and released, or otherwise assured, or intended so to be, so as such annual sum or yearly rent-charge do not exceed the sum of £—— by the year, during the life of the said C. B., and do not exceed the yearly sum of £—— after the decease of the said C. B., and to be free from all taxes and deductions whatsoever, parliamentary or otherwise, and to be payable quarterly, with such powers of distress and entry for the re-

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(*a*) Or, as the case may be,—

"with the consent of the said C. D. during his life, such consent to be testified by some writing under his hand, and after his decease, without such consent."

(*b*) Or,—

"without being in lieu."

covery of such annual sum or yearly rent-charge when in arrear, and such term or terms of years for the better securing the due payment thereof, to take effect immediately (*a*) after the decease of the said A. B., as to him the said A. B. shall seem meet.

To jointure a second wife.

XXII. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, That in case the said G. H. [*first wife*] shall depart this life in the lifetime of the said E. F. [*husband*], it shall be lawful for the said E. F., at any time or times thereafter, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and to be attested by two or more credible witnesses (but subject and without prejudice to the said term of one thousand years, and to the trusts thereof), to limit or appoint unto or to the use of any woman or women whom he the said E. F. shall marry after the decease of the said G. H., for the life or lives of such woman or women respectively, for her and their jointure and jointures respectively, and in bar or without being in bar of her or their dower or thirds by the common law, or by custom or otherwise, any annual sum or annual sums, yearly rent or yearly rents, not exceeding the annual sum or yearly rent of £——, for the life or lives of any such woman or women, such annual sum or annual sums, yearly rent or yearly rents, to be issuing and payable out of and charged and chargeable upon all or any part of the manors, lands, and other hereditaments hereinafter granted and released, or expressed and intended so to be, and to be paid half-yearly or quarterly, at such place and places, and in such manner, and with such powers and remedies by distress, entry, deten-

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(*a*) Or,—
"at any time."

tion of the possession, and perception of the rents, issues, and profits of the said manors, messuages, lands, and other hereditaments, and to be secured by such term or terms of years, with or without impeachment of waste, to take effect immediately after the decease of the said E. F., and subject to the estate hereinbefore limited to the said A. B. and C. D., such limitations or appointments to be made either before or after such intermarriage or intermarriages respectively, as to the said E. F. shall seem meet.

Another form.

XXIII. Provided always, that in case the said E. F. shall survive the said G. H., it shall be lawful for him the said E. F., by any deed to be sealed and delivered by him in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, to be by him signed and published in the presence of and attested by two or more credible witnesses, to appoint to the use of any woman whom he may happen to marry, any annual sum not exceeding £—— of lawful money of Great Britain, to be issuing out of all or any part of the said manors and other hereditaments, and to be paid quarterly, with usual powers of distress and entry, and perception of the rents, issues, and profits; and as a further security for the payment of the same, to appoint the hereditaments so to be charged to one or more trustee or trustees, for a term of —— years, in trust to raise the same by the usual ways or means, or any of them, or by mortgage.

To jointure. (In wills).

XXIV. Provided also, and I hereby declare, that it shall be lawful for the said A. B. during his life, and after his decease for every person hereby made tenant for life of my said manors, lands, and other hereditaments, and either before or when they respectively shall for the time being be entitled to the actual possession, or to the rents, issues, and profits of the same, by virtue of the limitations hereinbefore contained, by any deed or deeds, with or without power of revocation, to be by them respectively sealed and delivered in the presence of, and to be attested by two or more credible witnesses, or by their respective last wills and testaments in writing, or any codicil or codicils thereto, to

be by them respectively signed in the presence of, and to be attested by two or more credible witnesses, to limit or appoint unto, or to the use of, or in trust for any woman or women, whom they respectively have married or shall marry, for the life or lives of such woman or women respectively, for her or their jointure or jointures respectively, and in bar or without being in bar of her or their dower, any annual sum or sums of money not exceeding in the whole the clear yearly sum of £—— for any such woman, to be issuing out of, and charged or chargeable upon all or any part or parts of the said manors, lands, and other hereditaments hereinbefore devised, to be secured by such powers of distress and entry, and detention of the possession and perception of the rents, issues, and profits of the same hereditaments, and such term or terms of years, with or without impeachment of waste, to take effect immediately after the decease of the person or persons so respectively making such limitation or appointment as hereinbefore is mentioned, and such limitations and appointments to be made, either before or after such intermarriage or intermarriages respectively, as to the said A. B., or other person or persons making the same, shall seem meet: But I expressly declare, that the manors, lands, and other hereditaments hereby devised as aforesaid, shall not, under or by virtue of the power for that purpose hereinbefore contained, be at any one time subject or liable to the payment of any annual sum or sums of money, exceeding the principal sum of £—— in the whole, for the jointures of any such women, so that the payment of the annual sum occasioning any excess beyond the said sum of £—— shall, during the time of such excess, be suspended; and also that if any such person or persons shall exercise the aforesaid power of jointuring, before he or they shall be so entitled to the possession or to the receipt of the rents and profits of the said manors, lands, and other hereditaments, in every such case, the said jointure or jointures shall not take effect upon or charge my said estates, unless and until the person or persons so exercising the said power shall become, or if living, would have become entitled, under the limitations hereinbefore contained, to the actual possession, or to the rents and profits of my said estates.

To jointure. (In wills).

XXV. And I hereby authorize and empower the several persons to whom all or any of the aforesaid manors, plantations, lands, and hereditaments, are by this will given or devised for life, when and as they respectively shall come to the actual possession of the said hereditaments and premises, or any part thereof, by any deed or deeds, writing or writings, under their respective hands and seals, attested by two or more credible witnesses, to grant, settle, limit, or appoint any part or parts of the same manors, lands, and hereditaments, or any rent-charge or annuity to be issuing thereout, not exceeding the yearly sum of £—— in the whole, unto, or in trust for, or to the use of any woman or women with whom they may respectively intermarry, (either before or after such marriage), for the life or lives of such woman or women, and to grant and limit any powers of entry and distress for the recovery and receipt of such annuity or rent-charge, as they may respectively think fit, and to limit and create any term or terms of years to any trustee or trustees for the better securing the same.

To enable intended wife to appoint any sum not exceeding £—— in favour of any children of the marriage, who at the time of the appointment shall be of a given age; such appointment not to prejudice the right of such child or children to their share of the residue of trust-monies. (In marriage-settlement of trust-money).

XXVI. Provided always, and it is hereby declared and agreed, by and between all the parties to these presents, that notwithstanding any thing hereinbefore contained, and notwithstanding the coverture of the said G. H., by her said intended or any future husband, it shall or may be lawful to and for the said G. H., by any deed or deeds, or instrument or instruments in writing under her hand, to be attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or by any codicil or codicils thereto, to be respectively signed and published by her, in the presence of two or more credible witnesses, and to be attested by the same witnesses, to direct or appoint, that any sum or sums of money, not exceeding in the whole £—— of lawful money of Great Britain, shall be raised by or out of the said trust monies, stocks, funds, and securities, for the benefit of any child or children of the said intended marriage, who at the time of such direction or appointment, being a son or sons, shall be of the age of fifteen years at least, or being a daughter or daughters, shall be of

the age of twenty-one years or upwards, or married, and that such sum or sums so directed to be raised shall be raised at the time or times when the same shall be directed to be paid, and shall be paid to the child or children respectively to whom the said G. H. shall direct or appoint the same, discharged of and from all the trusts hereinbefore declared thereof, and that in the meantime, till the same sum or sums of money shall become payable, or in case such sum or sums of money shall not be directed to be raised, or shall not become payable, the same sum or sums of money shall remain and continue subject to the trusts hereinbefore expressed and declared concerning the said sum of £——, and that the sum or sums to be so appointed shall not exclude the child or children to whom such appointment shall be made from a full or equal share of the residue of the said trust monies, stocks, funds, and securities.

To enable a woman to limit an estate for life in settled premises to any husband with whom she shall intermarry from time to time, with a limitation to trustees to support contingent remainders, and a power of leasing.

XXVII. Provided also, and it is hereby declared and agreed by and between the said parties hereto, as far as they are respectively interested, that it shall and may be lawful to and for the said G. H., at any time or times during her life, by any deed or deeds, writing or writings, to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, to limit and appoint all and singular the said manors, messuages, lands, tenements, hereditaments, and premises hereby granted or released, or any of them, or any part thereof, unto or to the use of any person or persons with whom she may hereafter and from time to time intermarry, and his assigns, for and during the term of the life of such person respectively, to take effect (*a*) in the lifetime of her the said G. H., or after her decease, as she shall see fit, with the usual limitation to trustees to preserve contingent remainders, and to be with or without (as she shall think proper) a power for such person respectively to grant leases of the said manors, messuages, lands, tenements, hereditaments, and premises, or any part thereof, for such term,

(*a*) "In possession, upon or at any time after the decease, &c."

not exceeding —— years, as the said G. H. shall direct, and such power to be in other respects subject to the several restrictions contained in the power of leasing hereinafter contained.

To enable wife by will to limit a life interest in a money fund to or in trust for a husband.

XXVIII. Provided always, and it is hereby declared and agreed, that notwithstanding anything hereinbefore contained, but subject and without prejudice to the interest or interests limited to the said G. H. [*wife*], or upon trust for her during her life, it shall and may be lawful to and for the said G. H., at any time during her said intended coverture, and notwithstanding the same, by her last will and testament in writing, or any writing in the nature of and purporting to be her last will and testament, to be respectively attested by two witnesses, to appoint to the said E. F., or to any person or persons in trust for him or for his benefit, and either for the life of the said E. F., or for any term of years, to determine in the lifetime of the said E. F., or at all events with his death, the dividends, interest, and income of all or any part of the said sum of £—— Bank Annuities, or the stocks, funds, and securities to be purchased with the produce thereof, or otherwise any annual sum, to be payable out of the same dividends, interest, and income.

For wife in case she shall survive her husband, to appoint a life-interest in stock in favour of any second husband.

XXIX. Provided always, and it is hereby agreed and declared, that in case the said A. B. shall depart this life in the lifetime of the said C. D., his intended wife, that it shall be lawful for the said C. D. from time to time, by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, to be by her signed and published in the presence of and attested by the like number of credible witnesses, to appoint to or for the benefit of any husband or husbands with whom she may intermarry after the decease of the said A. B., or to any person or persons in trust for such husband respectively, from and after the decease of her the said C. D., and thenceforth for the life of any such husband, or for any term of years, to determine in his lifetime, or, at all events,

with his decease, the interest, dividends, and annual produce of all or any part of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or any annual sum or sums to be payable out of the same interest, dividends, and annual produce, and the same shall be paid by the said E. F. and G. H., [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor accordingly; the trust hereinafter declared for the benefit of the children and issue of the said A. B. by the said C. D., his intended wife, or any other thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

For wife, if survivor, to charge settled estates with a sum of money to be disposed of by her appointment, and to create a term for securing the same.

XXX. Provided always, and it is hereby declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that in case the said G. H. shall survive the said E. F., her intended husband, then upon or at any time or times after the death of the said E. F., it shall and may be lawful to and for the said G. H., as well when covert by any future husband as when sole, and notwithstanding her coverture, by any deed or deeds, writing or writings, under her hand and seal, to be attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, to be signed and published by her in the presence of and attested by the like number of credible witnesses, to subject and charge all or any part of the said manors, messuages, lands, and other hereditaments hereby released, or otherwise assured, or intended so to be, with any sum or sums of money, not exceeding in the whole £——, with interest thereon, to commence at any time from or after the death of the said G. H., at any rate not exceeding £—— per cent. per annum, unto or for the benefit of such person or persons as the said G. H. shall, by the same deed or deeds, will or wills, codicil or codicils, or by any other deed or deeds, writing or writings under her hand and seal, and to be attested as aforesaid, or by any codicil or codicils to her said will, and to be executed and attested in the same manner as the said will shall direct, limit, or appoint; and for better and more effectually se-

curing the payment of the same sum or sums of money, with interest as aforesaid, to limit and appoint the same, or any part thereof, To or to the use of any trustee or trustees, or other person or persons, for any term or number of years; subject nevertheless to redemption on payment of the sum or sums of money to be charged as aforesaid, and the interest, if any, which shall become due thereon, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding; Nevertheless, the term or terms to be afterwards limited, under or by virtue of or pursuant to the power of appointing by way of lease or demise which is hereinafter contained, shall take effect and have priority, as to the possession, in preference to the term or terms of years which shall be limited under or by virtue of this present power, and so that the owner or owners of the same term or terms may be entitled to the rents to be reserved by such appointments by way of lease or demise (*a*).

Of appointment in case only one or two children shall be entitled to portions.

XXXI. Provided always, and in case, upon the death of such one of them the said E. F. and G. H. as shall first depart this life, or at any time afterwards, and during the life of the survivor of them the said E. F. and G. H., it shall be ascertained that only one child or only two children of the said intended marriage have or hath taken, or can or may take a vested interest or vested interests in the portions hereby provided for the issue of the said intended marriage, then and in that case, and immediately thereupon, or at any time afterwards, it shall and may be lawful to and for the survivor of them the said E. F. and G. H. (and as to the said G. H., notwithstanding her coverture by any future hus-

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(*a*) "But notwithstanding any thing hereinbefore contained, the said manors, messuages, lands, and other hereditaments shall not at any time after the death of the said G. H., party hereto, be charged or chargeable as against any person or persons entitled in remainder expectant on his estate, with or for more than one year's interest on the principal to be charged or raised as aforesaid, if the same principal sum and interest would together exceed £—— of lawful money of Great Britain."

band), by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by such survivor in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by his or her last will and testament in writing, or any writing in the nature of or purporting to be his or her last will and testament, or any codicil or codicils thereto, to be respectively signed and published by such survivor in the presence of and to be attested by the like number of credible witnesses, to direct and appoint all or any part of the property hereby settled by him or her respectively, or the produce thereof, or the stocks, funds, and securities in or upon which such produce shall be invested, to any person or persons whomsoever, discharged of and from all or any of the trusts hereby declared, for the benefit of the issue of the said intended marriage, so as such direction or appointment shall not disturb or defeat any appointment previously made and then remaining in force, under or by virtue of all or any of the powers and authorities hereinbefore contained.

To enable husband, on default of sons of intended marriage, to appoint lands to sons of future marriage in tail male, under certain restrictions.

XXXII. Provided further, and it is hereby declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that in case there shall be a daughter or daughters of the said intended marriage, and no son of the same marriage, or the son or all the sons, if any, of the said intended marriage shall depart this life under the age of twenty-one years, without any issue of any of their bodies lawfully begotten, and the said E. F. shall have a son or sons by any woman or women with whom he shall marry from time to time after the decease of the said G. H., then and in that case, either before or after the death of such son or sons, it shall or may be lawful to and for the said E. F., if he shall think fit, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be severally signed, published, and declared by him in the presence of three or more credible witnesses, and to be attested by the same witnesses, to

appoint all or any part or parts of the said manors, messuages, lands, and other hereditaments to any one or more of the son or sons of any second or future marriage of the said E. F., for an estate or estates in tail male, with or without limitations over to any one or more of the others of the same sons in tail, to take effect immediately after the death of the said E. F., subject nevertheless and without prejudice to any annuity or rent-charge, portion or portions, which shall be directed to be raised under and by virtue of, and pursuant to all or any of the powers hereinbefore or hereinafter contained; and also subject and without prejudice to all or any of the powers, authorities, trusts, and terms of years which shall be respectively limited or created for raising the said annuity or yearly rent-charge, and portion or portions respectively; and so and in such manner that the daughter or daughters of the said intended marriage of the said E. F. and G. H. may, immediately after the death or respective deaths of the son or sons in whose favour such estate or estates tail shall be appointed, and failure of the issue male of the same son or sons, be entitled to take the said manors, messuages, lands, and other hereditaments to be appointed to such son or sons respectively, in such or the same or the like manner, and for such and the same or the like estate or estates as she or they respectively would have been entitled to or have taken in case no such appointment or appointments to the son or sons of any such future marriage had been made, and so as the said E. F. shall, at or prior to the time of making any such appointment, effectually charge and subject the said manors, messuages, lands, and other hereditaments hereby released or otherwise assured, to and with the payment of a portion or portions to the daughter or daughters of the said intended marriage of the said E. F. with the said G. H., not less than £—— for one daughter, if only one, and not less than £—— for each of such daughters, if more than one; to be vested in them respectively when and as they respectively shall attain their respective ages of twenty-one years, or day or respective days of marriage, which as to each of them respectively shall first happen; and to be payable, and raised for, and paid to them respectively when and as she and they respectively shall

attain that age or day, or those ages or days, unless the said E. F. shall be living at that time; and in that case, as soon as may be after his death, with interest in the meantime after the death of the said E. F., and thenceforth until the said portion or portions shall become payable and be raised and paid as aforesaid, at and after the rate of £—— per cent. per annum; And also do and shall limit and appoint the said manors, messuages, lands, and other hereditaments to a trustee or trustees for a term of five hundred years, to take effect and commence in possession immediately after the death of the said E. F., upon trust for securing and raising the said last-mentioned portion or portions, and the interest thereof, when and as the same shall become due and payable. And it is hereby declared and agreed, that the said E. F. shall have and may exercise all and singular the powers and authorities which shall be necessary to enable him to subject and charge the said portion or portions, and the interest thereof, and to limit a term or terms of years for securing and raising the same portion or portions and interest, according to the true intent and meaning of these presents, any thing hereinbefore contained to the contrary thereof notwithstanding.

Another form.

XXXIII. Provided further, and it is hereby declared and agreed, by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that in case there shall be no son of the said intended marriage, or all the sons, if any, of the said marriage shall depart this life under the age of twenty-one years without any issue male of any of their bodies lawfully begotten, and the said E. F. shall have a son or sons by any woman or women with whom he shall marry from time to time after the death of the said G. H., then and in that case, either before or after the death of such son or sons of the now intended marriage, or the birth of such son or sons of a future marriage, it shall or may be lawful to and for the said E. F., if he shall think fit, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by his last will and testa-

ment in writing, or any codicil or codicils thereto, to be severally signed, sealed, published, and declared by him in the presence of three or more credible witnesses, and to be attested by the same witnesses, to appoint all or any part or parts of the said manors and other hereditaments to any one or more of the son or sons of a second or future marriage of the said E. F., for an estate or estates in tail male, with limitations over to any one or more of the others of the same sons in tail male, to take effect immediately upon or at any time after the death of the said E. F., and either absolutely or conditionally, subject nevertheless and without prejudice to any annuity or rent-charge, portion or portions, which shall be directed to be raised under and by virtue of, and pursuant to all or any of the powers hereinbefore or hereinafter contained; and also subject and without prejudice to all or any of the powers, authorities, trusts, and terms of years which shall be respectively limited or created for raising the said annuity or yearly rent-charge, and portion or portions respectively; and so and in such manner that the son or sons, daughter or daughters of the said intended marriage of the said E. F. and G. H., or the issue of any of the same son or sons, daughter or daughters, may, immediately after the death or respective deaths of the son or sons in whose favour such estate or estates tail shall be appointed, and failure of the issue male of the same son or sons, be entitled to take the said manor and other hereditaments to be appointed to such son or sons respectively, in such and the same and the like manner, and for such and the same and the like estate or estates as he, she, or they respectively would have been entitled to have therein in case no such appointment or appointments to the son or sons of any such future marriage had been made, and so as the said E. F. shall, at or prior to the time of making any such appointment, effectually subject and charge the said manor and other hereditaments hereby released or otherwise assured, to and with the payment of a portion or portions to a daughter or daughters of the said intended marriage of the said E. F. with the said G. H.; and also the daughter or daughters, if any, of a deceased son or sons of the same marriage, not less than £—— for one such daughter, if only one, and not less than

£—— for each of such daughters, if more than one; and as to a daughter or daughters of the said E. F. by the said G. H., to be vested in her or them respectively when and as she and they respectively shall attain her or their age or respective ages of twenty-one years, or day or respective days of marriage, which as to each of them respectively shall first happen; and as to such daughter or daughters of a deceased son or sons of the said E. F. by the said G. H., to be vested in her or them respectively on the death of the said E. F., or which shall last happen on the death of the father of each of the same daughters respectively; and to be payable and raised for, and paid to the daughter or daughters respectively of the said E. F. and G. H., when and as she and they respectively shall attain her or their said age or day or respective ages or days, unless the said E. F. shall be living at that time; and in that case, as soon as may be after his death, with interest in the meantime after the death of the said E. F., and thenceforth until the said portion or portions shall become payable, and be raised and paid as aforesaid, at and after the rate of £—— per centum per annum; and to be payable and raised for, and paid to the daughter or daughters of a deceased son or sons of the said E. F. and G. H., when and as she and they respectively shall attain her or their age or respective ages of twenty-one years, or day or respective days of marriage, which as to each of them respectively shall first happen, unless the said E. F. shall be living at that time; and in that case, as soon as may be after his death, with interest for the same in the meantime after the death of the said E. F., or which shall last happen, the death of each son who shall be the father of any such daughter or daughters respectively of a deceased son or sons, and thenceforth until the said portion or portions of each such daughter of any such son or sons shall become payable, and be raised and paid as aforesaid, at and after the rate of £—— per centum per annum; and so as the said E. F. do and shall limit and appoint the said manor and other hereditaments to a trustee or trustees for a term of five hundred years, to take effect and commence in possession immediately after the death of the said E. F., subject and without prejudice to the said

annuity or rent-charge, and the powers and remedies for recovering and enforcing the payment of the same, upon trust for securing and raising all the said last-mentioned portion or portions, and the interest thereof, when and as the same shall become due and payable. Provided always, and in case there shall be a daughter of the said intended marriage of the said E. F. and G. H., and also a daughter of any deceased son of the same marriage, neither of such daughters shall be entitled to any greater or larger portion under the power last hereinbefore contained than the sum of £——, unless the said E. F. shall think fit to appoint a larger sum to each or either of them. Provided further, and in case there shall be two or more such daughters (including a daughter or daughters of any of the said intended marriage of the said E. F. and G. H., and a daughter or daughters, if any, of a deceased son or sons of the same marriage), and only one of such daughters shall become absolutely entitled to a portion under the provision last hereinbefore contained, such only daughter (whether a daughter of the said intended marriage of the said E. F. and G. H., or a daughter of a deceased son of the same marriage) shall be entitled to have a sum not less than £—— for her portion, under or by means of the appointment to be made as aforesaid.

For intended wife, in the event of her surviving husband, to appoint part of trust-monies to children of second marriage, so as the children of first marriage shall not have less than a specified sum each. (After the common settlement of trusts for children, as parents shall appoint, &c.)

XXXIV. Provided always, and it is hereby further declared and agreed, by and between the said parties to these presents, as far as they respectively are interested, that if the said A. B. [*husband*] should depart this life in the lifetime of the said C. D. [*wife*], leaving any child, children, or other persons entitled to any portion or share of and in the said trust monies, stocks, funds, and securities, and there shall be any surplus of the said trust monies, stocks, funds, and securities, after appropriating to or for the same child, or each of the same children respectively, or the person or persons who shall be entitled to the portion or share of any deceased child the sum of £—— of lawful British money, or the amount or value thereof in other property, stocks, funds, or securities, (including the sum or sums of money, or other property which shall belong to or be taken by any such child or children under any appointment made to him,

her, or them), then and in that case, and notwithstanding the trusts hereinbefore declared, it shall and may be lawful to and for the said C. D., (notwithstanding her coverture by any future husband), by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of two or more credible witnesses, and to be attested by the same witnesses.

To enable the intended wife on the event of her dying in her husband's lifetime, and without issue living, to determine her husband's life-interest in part of the settled monies.

XXXV. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that in case the said C. D. [*wife*] shall depart this life in the lifetime of the said A. B. [*husband*], and after the solemnization of the said intended marriage, and at the death of the said C. D. there shall be no issue of the said intended marriage then living, it shall or may be lawful to and for the said C. D., notwithstanding any of the trusts hereinbefore expressed and declared by any deed or deeds, writing or writings, under her hand and seal, or by her last will and testament in writing, or any writing in the nature of her last will and testament, or by any codicil or codicils thereto, to be respectively executed by her in the presence of two or more credible witnesses, and to be attested by the same witnesses, to direct and declare that the trusts hereinbefore expressed and declared for the benefit of the said A. B. during his life, shall, as to all or any part of two-fifth parts, (the whole in five equal parts to be divided), of and in the said trust monies, stocks, funds, securities, and future interest, dividends, and income thereof, cease and determine, so and in such manner that immediately after the decease of the said C. D., or at any other stated time, all or any part of the same two-fifth parts may be discharged of and from the trusts hereinbefore declared thereof, for the benefit of the said A. B. during his life, and the same trusts shall cease accordingly.

To determine an annuity on securing the same on funded property.

XXXVI. Provided also, and the person or persons liable to pay the said annuity, yearly sum or rent-charge of £——, shall be entitled to repurchase and redeem the same, upon the terms of transferring at any time within —— days from my death the sum of £——, in the £3 per cent. Consolidated

Bank Annuities, into the name or names of the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, to be held by him or them upon the same or the like trusts, as near as may be, and the nature of the property will admit, as are hereby declared of the said annuity, yearly sum, or rent-charge of £——, and also upon the terms of paying all the arrears of the same annuity, yearly sum, or rent-charge of £——, and a proportional part of the same annuity, yearly sum, or rent-charge of £——, to the time of transferring the said Bank Annuities as aforesaid; and that when and as soon as such transfer and payment shall be made, the said annuity, yearly sum, or rent-charge of £—— shall cease and be void to all intents and purposes whatsoever, and upon the request and at the costs and charges of the person or persons transferring the said £3 per cent. Consolidated Bank Annuities, the said A. B. and C. D., or the survivor of them, his heirs or assigns, shall execute a release of the said annuity, yearly sum, or rent-charge of £——, so and in such manner that the same may be extinguished.

Of appointment in favour of relations, and to select these relations from a more immediate or more remote degree. (In wills).

XXXVII. And if &c., then and in either of the said cases, it shall or may be lawful to and for the said A. B., either before or after the failure of such issue, by his last will and testament in writing, or any codicil to be by him duly executed in the presence of two or more credible witnesses, and to be attested by them in his presence, to give, devise, and dispose of all or any of the said messuages &c., unto or for the benefit of such person or persons of kin to me on the part of my father, for such estates or interests, or by way of annuity, legacy, rent-charge, or otherwise, and in such manner as he the said A. B. shall think fit, and to select such persons from a more remote degree of relationship, although there shall be a person or persons in a nearer degree of relationship.

To raise portions for younger children.

XXXVIII. Provided also, and it is hereby further agreed and declared between and by the said parties to these presents, that in case the said G. H. shall depart this life in the lifetime of the said E. F., it shall be lawful to and for the

said E. F., at any time or times thereafter, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and to be attested by two or more credible witnesses, (but subject and without prejudice to the said term of one thousand years, and to the trusts thereof), to subject and charge all or any part or parts of the said manors, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with the payment of any sum or sums of money not exceeding in the whole the sum of £——, with interest for the same from the time of making any such charge, for the portion or portions of all or any of the child or children of the said E. F., by any woman or women whom he shall marry after the decease of the said G. H., other than and besides an eldest or only son, who under or by virtue of the limitations hereinbefore contained shall or may, for the time being, be entitled in possession or in remainder expectant upon the decease of the said E. F. and G. H., or such of them as shall be living, (and subject to the several terms of 1000 years and 1000 years), to the said manors, messuages, lands, and other hereditaments, or to the receipt of the rents, issues, and profits thereof; to be an interest or interests vested in, and to be paid and payable between or among, all and every one or more of such child or children respectively, at such age, day, or time, or respective ages, days, or times, in such manner, and if more than one, in equal shares and proportions, as the said E. F. shall by any deed or deeds, instrument or instruments in writing, or will, or codicil or codicils, direct or appoint; and for securing the payment of the sum or sums of money to be charged with interest for the same respectively, by the same or any other deed or deeds, instrument or instruments in writing, sealed, delivered, and attested, or by such last will and testament, or codicil or codicils, signed, published, and attested as aforesaid, to limit the manors, lands, and other hereditaments to be charged with such sum or sums of money as aforesaid, to any person or persons

whomsoever, for any term or terms of years, by way of trust or mortgage, with or without impeachment of waste, so that the charge or charges to be made, and the use or estate to be limited as lastly hereinbefore is mentioned, be made to cease or be redeemed on full payment, within a reasonable time, of the said sum of £——, or so much thereof as shall be charged by virtue of this present power, and the interest thereof, by the person or persons who for the time being shall be entitled, under and by virtue of the limitations hereinbefore contained, to the freehold or inheritance of the hereditaments to be charged or limited; But the said E. F., during his life, shall keep down and pay the interest of the sum or sums of money which shall be charged by him, by virtue of this present power.

To raise portions for daughters and younger sons, with variations.

XXXIX. Provided also, and it is hereby further agreed and declared by and between the said parties to these presents, that it shall and may be lawful to and for the said A. B. (*a*), [when he shall come into and be in the actual possession of the said manor &c., by virtue of or under the limitations hereinbefore made thereof to him as aforesaid, (but not sooner or otherwise)], by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by two or more such witnesses (*b*), to subject and charge all or any part or parts

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(*a*) "And the person or persons who for the time being shall, by virtue of the limitations hereinbefore contained, be entitled for his life to the said manors," &c.

(*b*) 1. "But subject and without prejudice to the said annual sum or yearly rent-charge, payable to the said C. D. during her life, and to the powers and remedies hereinbefore limited for enforcing payment thereof; and also subject and without prejudice to any jointure which may be created by

of the said manor &c., with the payment of any sum or sums of money (*a*), for the portion or portions of (*b*) all or any daughter or daughters, or younger son or sons of the said A. B., by any woman or women whom he shall hereafter marry (*c*), [not exceeding in the whole the principal sum of £—— to any one such child, and not exceeding the sum of £—— for any two or more such children], to be paid to and shared and divided between or among all and every or any one or more of the children of the said A. B., or of such other person or persons, (not being any of them an eldest or only son for the time being entitled as aforesaid), at such age or ages, days or times, and in such shares and proportions, (if there shall be two or more such children), and with such maintenance for such child or children, to commence and be payable from the death of the said A. B., not exceeding the interest of his, her, or their said portion or respective portions, at the rate of £—— per cent. per annum, until his, her, or their said portion or portions shall become payable, and with such clauses of vesting, accruer, or survivorship as the said A. B. at any time or times, by the same or any other deed or deeds, instrument or instru-

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the said A. B., or such other person or persons, in exercise of the power hereinbefore reserved to him or them for that purpose."

2. "But subject and without prejudice to the charges which shall be created under or by virtue of the powers hereinbefore contained."

(*a*) "Not exceeding in the whole the sum of £—— of lawful money of Great Britain."

(*b*) "Of the said A. B., or of such other person or persons lawfully begotten or to be begotten, (not being any of them an eldest or only son for the time being entitled to the said hereditaments, for an estate tail in possession or in remainder expectant on the decease of the said C. D., or such other person or persons)."

(*c*) "With interest for the same at any rate not exceeding £5 for every £100 by the year."

ments in writing, with or without power of revocation, to be sealed and delivered by him in the presence of and to be attested by two or more such witnesses, or by his last will and testament in writing, to be signed by him in the presence of and to be attested by two or more such witnesses, shall appoint; and in default of such appointment, to be paid to such child or children, being a younger son or younger sons at the age of twenty-one years, or being a daughter or daughters, at her or their age or ages of twenty-one years or day or days of marriage, which shall first happen after the decease of the said A. B., share and share alike, (if more than one), and with benefit of accruer or survivorship to the survivor or survivors, others or other of them, in case of any of them dying before his, her, or their portion or portions shall become vested. And it is hereby agreed and declared, that for the purposes aforesaid it shall and may be lawful to and for the said A. B., [when he shall be in the actual possession of the said manor &c. as aforesaid,] by the same or any other deed or deeds, instrument or instruments in writing, so sealed, delivered, and attested as aforesaid, or by his last will and testament in writing, so signed and attested as aforesaid, to grant, demise, limit, and appoint the same manor &c., which he shall so charge with such portion or portions, unto any person or persons, for any term or number of years, without impeachment of waste, to commence from the decease of the said A. B., Upon trust for raising or securing such portion or portions and maintenance in the usual manner, and by the usual means.

Another form.

XL. Provided always, and it is hereby declared and agreed by and between the said parties to these presents, that it shall and may be lawful to and for all and every the person and persons respectively, [being males, and], to whom estates for their respective lives are hereby limited, when and as they shall by virtue of the limitations hereinbefore contained respectively, be in the actual possession of or entitled to the receipt of the rents, issues, and profits of the said messuages &c. hereby directed, limited, appointed, granted, and released as aforesaid, or any part or parts thereof, by any deed or deeds, instrument or instruments in writing, with

or without power of revocation, to be by them respectively sealed and delivered in the presence of and attested by two or more credible witnesses, or by their respective last wills and testaments in writing, or any codicil or codicils thereto, to be by them respectively signed and published in the presence of, and attested by two or more credible witnesses, (but subject and without prejudice as aforesaid), to subject and charge all or any part or parts of the said messuages &c., hereinbefore by these presents respectively directed, limited, appointed, granted, and released, to or with the payment of any sum or sums of money, not exceeding in the whole the principal sum of £—— of lawful money of Great Britain, for the portion or portions of all or any daughter or daughters, younger son or sons of their respective bodies lawfully to be begotten (*a*), with lawful interest for the same, to be paid to or shared or divided between or among all and every or any one or more of such daughter or daughters, or younger son or sons at such age or respective ages, days or times, and if more than one, in such parts, shares, and proportions, and with such conditions, restrictions, and limitations over (such limitations over being for the benefit of some or one of such daughters or younger sons, or for determining the right to any such portion or portions), as the person or persons making such charge or charges shall think fit; and also for the purpose of securing such portion or portions with interest for the same respectively, by the same or any other deed or deeds, instrument or instruments in writing, so sealed, delivered, and attested as aforesaid, or by such last will and testament, or codicil or codicils thereto, so signed, published, and attested as aforesaid, to limit and appoint all or any part of the said messuages &c., to any person or persons, for any term or number

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(*a*) Or—

" Of all or any of the children of their respective bodies, not being any of them an eldest or only son for the time being entitled to the said hereditaments for an estate tail in possession or in remainder expectant on the decease of the said A. B., or of such other person or persons."

of years whatsoever, without impeachment of waste, absolutely, or by way of mortgage, so that the estate so to be limited or appointed shall be made redeemable on full payment of the sum or sums of money so to be charged, and the interest thereof; and so that the same hereditaments shall not, under or by virtue of the aforesaid power, be subject or liable to the payment of a larger sum than £—— in the whole at the same time (*a*).

(*a*) 1. "And so that no part of the said sum or sums of money for persons lastly hereinbefore mentioned shall be raised during the lives of the said A. B. and C. B., or during the life of the survivor of them, unless they shall jointly direct the same by such deed or instrument in writing as aforesaid, during their joint lives, or the survivor shall direct the same by some deed or instrument in writing."

2. "And so nevertheless as no one child shall, by survivorship or otherwise, be entitled to more than £—— for his or her portion, and so as no child shall be entitled to have an absolute and transmissible interest in his or her portion, unless such child, being a son, shall attain the age of twenty-one years, or die under that age, leaving issue of his body lawfully begotten living at his death, or, being a daughter, shall attain that age or be married; yet, nevertheless, one third part of the expectant portion of any child, being a son, may, during his minority, be made raisable for his advancement or preferment in life, and shall or may be actually raised for that purpose and that purpose only."

3. "So as no such portion, or any part or parts thereof, other than and except such part or parts thereof (if any) as shall be applied in the advancement and preferment of any such child, under any such direction or power to be given in that behalf, shall vest absolutely in any child, unless or until such child, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or be married; but such portion or portions, or such part thereof as shall not vest as aforesaid, shall cease to be a charge for the benefit of the person or persons entitled to the said premises on which the same shall have been charged as aforesaid, and

To raise portions for younger children. (In wills).

XLI. Provided also, and I do hereby declare, that it shall be lawful for the said A. B. during his life, and after his decease for each and every other person hereby made tenant for life of the said manors, lands, and other hereditaments, either before or when they respectively shall for the time being be entitled to the actual possession, or to the rents and profits of the same, by virtue of the limitations hereinbefore contained, by any deed or deeds, to be by them respectively sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by their respective last wills and testaments or codicils respectively, to be by them respectively signed in the presence of and to be attested by two or more credible witnesses, to subject and charge all or any part or parts of the said manors, lands, and other hereditaments hereinbefore devised with the payment of any sum or sums of money, with interest for the same respectively from the time of making such charge, for the portion or portions of all and every or any one or more, exclusively of the other or others of his or their child or children, (other than and besides an eldest or only son for the time being, by virtue of the limitations hereinbefore contained entitled to the said manors, lands, and other hereditaments, in possession or remainder immediately expectant on his parent's decease), to be paid and payable to such child or children respectively, at such age, day, or time, or respective ages, days, or times, in such manner; and, if more than one, in such shares and proportions as they respectively shall, by any such deed or deeds, or will or wills, codicil or codicils, so to be executed and attested as aforesaid, direct or appoint; so as such charge or charges to be made by any one of them the said A. B., or other the tenant for life as aforesaid, do not exceed in the whole the sum of £——; But I hereby declare, that the said manors, lands, and other

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so as the sum or sums to be so appointed for a portion or portions shall not, together with and including the sum or sums which shall become payable under or by virtue of the provisions and trusts hereinbefore contained, exceed in the whole the sum of £——."

hereditaments, shall not, under or by virtue of this present power, be burthened with the actual payment of any further sum or sums than the sum of £—— in the whole, and that any charge exceeding, with the preceding charge or charges, either actually raised or still subsisting, the said sum of £——, shall, as to the extent only of and during such excess, be suspended; And that, for securing the payment of the sum or sums of money so to be charged, by virtue of this present power, with interest for the same respectively, it shall and may be lawful to and for the said A. B., or other the tenant or tenants for life aforesaid respectively, by the same or any other deed or deeds, instrument or instruments in writing, to be by him or them sealed and delivered and attested as aforesaid, or by such last will and testament in writing, or any codicil or codicils, so by him or them signed and attested as aforesaid, to limit the manors, lands, and other hereditaments, so to be respectively charged as hereinbefore is mentioned, to any person or persons respectively, by way of trust or mortgage, for any term or number of years whatsoever, with or without impeachment of waste, so that the charge or charges to be made, and the use or uses, estate or estates to be created or limited by any such limitation or limitations respectively, as lastly hereinbefore is mentioned, be made to cease, or be made redeemable on full payment of such sum or respective sums of money as shall be charged by virtue of this present power, and the interest thereof, by the person or persons who for the time being shall be entitled to the hereditaments in such term or terms of years to be comprised, in remainder or reversion immediately expectant upon the expiration of the same term or terms of years respectively; but the said A. B. or other tenant for life for the time being shall, during his respective life, keep down and pay the interest of the sum or sums of money which shall be so charged by virtue of this present power; and I also declare, that if any such tenant for life shall exercise the aforesaid power of charging the said manors, lands, and other hereditaments, for the benefit of his younger children, before such tenant for life shall be so entitled to the possession, or to the receipt of the rents and profits of the same, then and in every such case the charge

or charges so made by him shall not take effect, unless and until the person making the same shall become, or if living, would have become, entitled, under the limitations hereinbefore contained, to the actual possession, or to the receipt of the rents, issues, and profits of my said estates.

For intended husband in the event of his surviving and marrying again, to charge lands with portions for children of a second or future marriage, and to limit a term of years for securing the same.

XLII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that it shall and may be lawful to and for the said E. F., at any time after the death of the said G. H., and in the event that he shall survive her and marry again, and there shall be issue of such second or any future marriage, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by two or more credible witnesses, to subject and charge all or any part of the said manors, messuages, lands, and other hereditaments hereby released or otherwise assured, to and with any sum or sums of money, for the portion or portions of all or any child or children of such second or any future marriage, not exceeding £——, in case there shall be only one such child, and not exceeding £——, in case there shall be two or more such children, and with interest at any rate not exceeding £—— per cent. per annum on the sum to be raised; and the same portion or portions and interest to be paid to or divided between such child or children, at such age or respective ages, days or times, and if more than one, in such parts, shares, and proportions, and with such conditions, restrictions, and limitations over, (such limitations over being for the benefit of some one or more of such children), and with such directions for maintenance and advancement as the said E. F. shall think fit, and by such deed or deeds, instrument or instruments, will or wills, codicil or codicils, direct or appoint: And for the purposes of securing such portion or portions with such interest for the same respectively, by the same or any other deed or deeds, instrument or instruments in writing, so sealed, delivered, and attested as aforesaid, or by

such last will and testament, or codicil or codicils so signed, published, and attested as aforesaid, to limit and appoint the said manor, messuages, lands, and other hereditaments so to be charged with such portion or portions and interest, to any person or persons, for any term or number of years whatsoever, without impeachment of waste; Upon trust for raising and securing the said portion or portions, and interest, in the usual manner, and by the usual means; and so as no one child shall in any event, or by right of survivorship or otherwise, be entitled under and by virtue of this present power to any greater portion than the sum of £——, and so as no such portion, or any part or parts thereof, other than and except such part or parts thereof, if any, as shall be applied in the advancement or preferment of any such child, under any direction or power to be given by the said E. F. in that behalf, shall absolutely vest in any child, unless or until such child being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or be married, but the same portion or portions, or such part thereof as shall not vest as aforesaid, shall cease to be a charge for the benefit of the person or persons entitled to the said manors, &c., on which the same shall have been charged as aforesaid.

For trustees (in a certain event and subject to a particular term) to charge lands with portions for younger children.

XLIII. Provided always, and it is hereby declared and agreed by and between all the said parties to these presents, as far as they respectively are interested, and the said A. B. and C. D. do hereby severally and respectively direct, that in case the said E. D., or any or either of his children or descendants, shall at any time hereafter become seised under the uses hereinbefore declared of the freehold in possession, or freehold and inheritance in possession of the said messuages, &c. hereby released or otherwise assured, or intended so to be, or any part thereof, and the said F. D., G. D., and H. D., or any or either of them, or their, any or either of their issue or descendants shall be living at that time; then subject and without prejudice to the said term of 1000 years and the trusts thereof, it shall and may be lawful to and for the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, and he and they is and are hereby required, in such manner as he and they

shall be advised or think fit, to charge all the said messuages, &c. hereby released or otherwise assured, or intended so to be, or so much and such part of the same as shall so vest in possession in the said E. D., or any of his children or descendants, with such sum of money as shall be equal in amount to the principal sum to which the said E. D., or any person claiming under him, shall have received or shall be entitled to receive, as and for the share of the said E. D., his executors, administrators, or assigns, of and in the said sum of £——, or any other principal sum or sums of money raisable for portions of the younger children of the said A. B. and E. his wife, under or by means of the said hereinbefore in part recited indenture of release, bearing date on or about the —— day of ——, and the term of 1500 years created by the same indenture, and vested in the said I. K. and L. M., their executors, administrators, and assigns; And for the purpose of more effectually raising and securing the amount of the share of the said E. D., his executors, administrators, or assigns, of and in the said principal sum of £——, or other principal sum or sums of money raisable as aforesaid, the said E. F. and G. H., or the survivor of them, or the executors, administrators, or assigns of such survivor, shall or may, subject and without prejudice as aforesaid, limit and appoint the said messuages, &c. hereby released or otherwise assured, or intended so to be, or so much and such part of the same as shall so vest in possession in the said E. D., or any of his children or descendants, to any person or persons by way of mortgage for any term or number of years, subject to redemption on payment of the sum of money to be so raised as aforesaid, with interest for the same at the rate of £—— per cent. per annum; And also that in the meantime and until the said sum and interest shall be raised as aforesaid, the estate or estates of the said E. D., and of his children and descendants respectively, of and in the said messuages, &c., or so much and such part of the same as shall then as to the freehold or inheritance thereof, and under the uses hereinbefore declared thereof, be vested in possession in the said E. D., or in any of his children or descendants, shall be charged and chargeable with, and subject and liable to the payment of the sum

hereby directed to be raised as aforesaid, with interest for the same at the rate aforesaid, to be computed from the time that the said E. D., or any of his children or descendants, shall become entitled in possession as aforesaid, and to and with the powers and authorities hereinbefore given to the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, for raising the same sum and interest, and so and in such manner that the sum to be raised as aforesaid, and the interest thereof, and the said power for raising the same, may not, as far as the rules of law and equity will admit, be barred or destroyed by the said E. D., or any or either of his children or issue. And it is hereby further declared and agreed, that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, shall stand and be possessed of the said sum and interest to be raised under the provision last hereinbefore contained, In trust for such if any of them the said F. D., G. D., and H. D., as shall be living at the time when the said messuages, &c., or any of them, shall so vest in possession in the said E. D., or in any of his children or descendants, under the limitations hereinbefore contained, and for the issue, if any then living, of such of them the said F. D., G. D., and H. D. as shall be then dead, as tenants in common, and so and in such manner that the issue of such of them the said F. D., G. D., and H. D. as shall be then dead, shall take per stirpes and not per capita, and so as the issue of each respective parent may take as tenants in common between themselves, and so as no person or persons may take under the description of issue, unless his, her, or their parent or parents shall be previously deceased.

To raise out of personal estate, or if insufficient, out of real estate, certain portions for after-born children, with provision for their maintenance. (In wills).

XLIV. Provided always, and in case I shall at my death or at any time afterwards, and within due time, have any other son or sons, or a daughter or daughters, then I direct that there shall be raised for each such son the sum of £—— of lawful money of Great Britain; and for each daughter the sum of £—— of like lawful money, for his or her portion, to be vested in and paid to such son on his attaining the age of twenty-one years, or death under that age leaving issue at his death, and to be vested in and paid to

such daughter on her attaining that age or being married; and that such portions shall be raised for such sons and daughters respectively by and out of the residue of my personal estate, in case the same shall be sufficient for that purpose; and in case of any deficiency, then out of the residue of my real estate; and that each of the same children being a son, shall, during his minority, and each of the said children being a daughter, shall, during her minority, or, which shall first happen, until her marriage, be entitled to have such maintenance, education, and advancement, not exceeding interest at the rate of £—— on his or her said portion, from the income of the residue of my said real and personal estates, or sums to be set apart and appropriated for that purpose, as my said trustee or trustees for the time being shall in his or their discretion think fit. Provided always, and in case all or any one or more of the said children to be hereafter born being a son or sons, shall depart this life under the age of twenty-one years, without leaving any issue of his or their body or bodies lawfully begotten, living at his or their death or respective deaths, or being a daughter or daughters, shall depart this life under the age of twenty-one years without having been married, then I direct that the portion or portions of the son or sons, daughter or daughters so dying, shall lapse into and become a part of the fund or funds out of which the same respectively is or are hereby directed to be raised for the benefit of the person or persons entitled to the same fund or funds respectively.

To release a power of appointment with or without a consideration; if doubt of power to appoint be sanctioned by Attorney and Solicitor-General (a).

XLV. Provided always, and if at any time hereafter during the life of the said A. B., any doubt shall be entertained respecting the right of the said C. D. to make a valid appointment of the said additional sum of £——, in exercise of the power given to him by the will of the said E. F., and such doubt shall be sanctioned by the opinion in writing

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Abstract of a power to trustees of a settlement, to release the estate charged with the portion assigned to

(a) "Proviso, that in case the said A. B. should at any time during his life be desirous either of paying off and discharging the said portion or sum of £——, in exoneration of the estates and hereditaments charged therewith, or of charging other lands and hereditaments of competent value with the

of her Majesty's attorney or solicitor-general for the time being for the kingdom of Great Britain, then and in that

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them, if the tenant for life of that estate should pay it off or substitute another estate as a security.

payment of the same, to the satisfaction of the said trustees or trustee, it should be lawful for the same trustees or trustee, of their or his own proper authority, to accept and receive payment of the said portion or sum of £—— in the lifetime of the said A. B., or to take and accept the security of any such other lands, tenements, or hereditaments of competent value as aforesaid for the payment thereof (as the case might be); and upon either of those events, the said trustees or trustee might and were thereby fully authorized, empowered, and directed to make, do, and execute all such acts, deeds, matters and things as might be necessary or expedient for the purpose of releasing and discharging the manors and other hereditaments comprised in the said settlement of &c. from the raising and payment of the said portion or sum of £——, and the interest thereof, and from all claims and demands under or by virtue of the now abstracting indenture or otherwise in anywise relating thereto: And it is thereby declared and agreed that the said trustees or trustee should be full judges of the competency of such substituted lands, tenements, or hereditaments, and that it should not be incumbent on any person or persons becoming the purchaser or purchasers of the said manors and other hereditaments, or any of them, to see or inquire that such substituted lands, tenements, or hereditaments were of competent value for securing the said portion or sum. And it was thereby further provided and declared, in pursuance of an arrangement in that behalf made and adopted on the treaty for the said marriage, and particularly the said C. D. and E. F. did thereby respectively direct and request that the said trustees should forthwith, or as soon as conveniently might be, and they should be thereto required by the said A. B., fully and absolutely release and discharge all that and those the capital messuage or dwelling-house, park, lands, and hereditaments mentioned and described in the schedule thereunder written (being the mansion-house and park called &c.) of and from the said sum of £——, and every part thereof."

case it shall or may be lawful to and for the said A. B. and G. H., during their joint lives, and after the death of the said G. H. in the lifetime of the said A. B., then to and for the said A. B. alone, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by the said A. B. and G. H. during their joint lives, or by the said A. B. alone after he shall have survived the said G. H., to release all right, title, or interest in and to the said sum of £——, either for a consideration or without any consideration to be paid for such release; but in case any sum or sums of money shall be paid in consideration of such release, the sum or sums of money to be paid as such consideration shall be held upon, under, and subject to the same or the like trusts, and for the same and the like intents and purposes, and subject to the same or the like provisoes, declarations, and agreements as are contained in these presents, of and concerning the said sum of £——, and the stocks, funds, and securities in and upon which the same sum shall be invested.

To pay money to discharge lands from portions, and determine terms for raising same.

XLVI. Provided also, and it is hereby declared and agreed by and between the parties to these presents, that it shall and may be lawful to and for the said A. B., at any time after the death of the said C. D., or in his lifetime with his consent in writing, to pay the sum of £—— to the said E. F. and G. H., or the survivor of them, his executors or administrators, or other trustee or trustees for the time being of the said term of five hundred years, to be held by him or them, in the first place upon the same or the like trusts, and to and for the same and the like ends, intents, and purposes, and under and subject to the same or the like powers, provisoes, conditions, limitations, and agreements as are hereinbefore mentioned, expressed, and declared of and concerning the said sum of £—— to be so as aforesaid raised under the trusts of the said term of five hundred years, of and in the said messuages, lands, and other hereditaments hereinbefore limited to the use of the said E. F. and G. H., when and if the same sum of £—— shall become payable; and subject thereto, to be held as a fund to answer the trusts declared of the said sum of £—— to be raised as aforesaid under the trusts of the said term of six

hundred years, or so much of that sum as shall become payable, when and if that sum or any part thereof shall become payable; and that upon or immediately from and after such payment of the said sum of £——, and the said several sums of £—— and £—— hereby charged or made chargeable on the said messuages, lands, and other hereditaments, shall cease to be a charge on the same, and then and thereupon, and upon the payment of all the costs, charges, and expenses, if any, which shall have been incurred by, and then remain due and owing to the trustee or trustees of the said terms of five hundred years and six hundred years respectively, the same terms of five hundred years and six hundred years respectively, and each of them, shall cease and be void to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary notwithstanding.

Of advancement and maintenance out of children's portions.

XLVII. Provided also, and it is hereby agreed and declared, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, at any time or times after the decease of the survivor of them the said E F., and G. H. his intended wife, or in the lifetime of them or of the survivor of them, in case they or he shall so direct, by any writing or writings under their, his, or her hands or hand, to raise any part or parts of the said portion or portions to which any such child or children as aforesaid shall for the time being be entitled in expectancy, not exceeding in the whole for any one such child one equal half part of his or her presumptive portion or portions, and apply the money so to be raised for the benefit, advancement, or establishment in the world of such child or children, in such manner as the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, in their or his discretion shall think fit: And it is hereby agreed and declared, that the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after the decease of the survivor of them the said E. F., and G. H. his intended wife, and until the portion or portions hereby provided for their said child or children respectively as aforesaid shall

become payable, apply at their or his discretion the whole or any part of the interest, dividends, and annual produce of the portion or portions to which any such child or children respectively may for the time being be entitled in expectancy, for or towards his, her, or their maintenance and education respectively.

Of maintenance and advancement out of portions, with variations.

XLVIII. Provided always, and it is hereby further directed, declared, and agreed, by and between the parties to these presents, as far as they are respectively interested, that unless the contrary should be directed in or by any appointment or appointments to be made as aforesaid, it shall and may be lawful to and for the said trustee or trustees for the time being (*a*), at any time (*b*) or times after the decease (*c*) of the survivor of them the said E. F. and G. H., to pay and apply all or any part of the dividends, interest (*d*), and income, arising from the portion of each, any, or either of the children (*e*) of the said intended marriage, for the time being entitled to portions of and in the said trust monies, stocks, funds, and securities, during his or her minority (*f*), in or towards his or her maintenance, education,

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(*a*) "Of the said term of one thousand years."

(*b*) "And from time to time to apply all or any part of &c., the persons for the time being entitled to the immediate benefit of all or any part of the dividends &c., of and in &c., and being a minor, during his or her minority, in or towards &c., and to advance and pay to and for &c., of the legatees of this my will, being minors, notwithstanding his or her minority; nevertheless, with the consent of the person or persons (if any) entitled to the prior interest."

(*c*) "Bankruptcy or insolvency, which shall first happen, of the said ——, and after the decease of the said ——."

(*d*) "Of the then vested or presumptive share of each of the children or other issue respectively of the said intended marriage of and in &c."

(*e*) "Or issue."

(*f*) "To the guardian or guardians for the time being of the said children."

schooling, or clothing, in such manner as the said (*a*) trustee or trustees for the time being shall think fit; And also after the death of the survivor of the said E. F. and G. H., or in the lifetime of both or either of them with their joint consent in writing, during their joint lives, and after the death of one of them with the consent in writing of the survivor of them, and notwithstanding such child may be or afterwards may become an only child to advance and pay, to and for each, any, or either of the children (*b*) of the said intended marriage, notwithstanding his or her minority, any part not exceeding (*c*) one half of the then vested or expectant share of the same child (*d*) of and in the said trust monies, stocks, funds, and securities, either for placing out any such child (*d*) being a son (*e*) to any profession or employment, or in the purchase of a commission or commissions, or promotion for him in the army, or in the education of any child (*d*) being a son (*e*) at any university or universities, or any other seminary of learning, or any of the inns of court, or for the advancement or preferment in the world, or in marriage, of any such child (*d*), being either a son or daughter (*f*); And further that every sum of money [or other property] which shall be advanced to or for each of the same children (*g*) respectively, shall be taken and considered as a part of his or her said portion or share, and shall be deducted and allowed out of the same, notwithstanding his or her death before his or her portion or share shall be absolutely vested in him or her, or notwithstanding their right to the same portion may afterwards be defeated or avoided; and further that so much of the interest, dividends, and annual income arising from the portion or share of each of the same children (*g*) respectively, as shall not be applied for the maintenance or education of the child (*d*) respectively, to

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(*a*) "Guardian or guardians of the said children or issue, or in default of any guardian, the said &c."

(*b*) "Or other issue."

(*c*) "The sum of £——."

(*d*) "Or issue."

(*e*) "Being a male."

(*f*) "Being either a male or female."

(*g*) "And issue."

whom the same portion or share shall belong, shall, from time to time, be added to the principal monies of the same portion or share, and be improved at interest, together with the same, and as a part thereof, by way or in the nature of compound interest, and follow and be subject to all the limitations, trusts, and dispositions [either for children or other persons] hereinbefore expressed, declared, and contained of and concerning the principal of the same portion or share, until the same principal money shall become payable, or is or are hereby directed to be paid; and that no such advancement shall be recalled, or the trustees be liable to answer the same again, by reason that the interest of any child taking such advancement, shall be defeated by his becoming entitled to an estate tail in possession or in remainder expectant as aforesaid.

Another form.

XLIX. Provided always, and it is hereby declared and agreed, by and between the parties to these presents, that (*a*) notwithstanding all or any of the trusts hereinbefore expressed and declared, it shall and may be lawful to and for the trustee or trustees for the time being, at any time after the death of the said A. B., and thenceforth during the minority of each or any child of the said intended marriage, to apply all or any part of the dividends, interest, and income, arising from the portion of the same child, of and in the said £—— Bank Annuities, in or towards the maintenance, education, clothing, and advancement of the same child; Provided always, and after the death of the said A. B., and thenceforth during the life of the said C. D., and the minority of each or any of the said children, the said C. D. shall be entitled to the whole of the income of the same child, as a compensation for the maintenance and education of the same child; And also that after the death of the said A. B., or in her lifetime with her consent in writing, it shall and may be lawful to and for the said trustee or trustees for the time being to advance and pay, to and for each or any son of the said intended marriage, any part not exceeding one

(*a*) "Unless the contrary shall be directed by any appointment or appointments to be made as aforesaid."

half of the then vested or expectant share of the same son of and in the said £—— Bank Annuities, or the produce and accumulations of the same, and apply the same either for placing out such son respectively to any profession or employment, or in the purchase of a commission or commissions, or promotion in the army, or in the education of the same son or sons at any university or universities, or other seminary of learning, or at any of the inns of court, or of Chancery; and further that all sums of money which shall be advanced to and for each of the same sons (*a*) respectively, shall be taken and considered as a part of his said portion or share, and shall be deducted and allowed out of the same share, notwithstanding his death before his portion shall be absolutely vested in him; and further that so much of the dividends, interest, and income, arising after the death of the survivor of the said C. D. and A. B. his intended wife, from the portion of each of the children respectively, of the said intended marriage respectively, as shall not &c., (vide Art. XLVIII.)

Another form.

L. Provided also, and it is hereby agreed and declared, that it shall be lawful for the trustees or trustee for the time being of these presents, from and after the decease of the survivor of them the said A. B. and C. D., [*husband and wife*], until the whole of the said trust premises shall become vested in actual possession in such child or children as aforesaid, to pay and apply the interest, dividends, and annual produce of the then unvested part thereof unto or for the benefit of all and every the child or children for the time being of the said intended marriage, whose portion or portions shall be then unvested in actual possession, for and towards their, his, or her maintenance and benefit, equally to be divided between them, if more than one; and that they or he shall permit the residue (if any) of the said interest, dividends, and annual produce, to accumulate in the way of compound interest, for the benefit of the person or persons who shall become ultimately entitled to the fund from which

(*a*) "Children."

the same shall have proceeded. Provided always that it shall and may be lawful to and for the trustees or trustee for the time being of these presents, at any time or times after the decease of the survivor of them the said A. B. and C. D., or in the lifetime of them, or the survivor of them, with their, his, or her consent in writing, to raise, pay, and apply any part or parts of the portion or portions hereby provided for any child or children of the said intended marriage, not exceeding in the whole, for any one such child, one moiety of his or her presumptive portion, for his, her, or their preferment or advancement in the world, notwithstanding his, her, or their portion or portions shall not be then vested, or having become vested, shall not be payable.

Of maintenance and advancement out of interest of portions. (In wills).

LI. Provided always, and I further direct and declare that it shall and may be lawful to and for my trustee or trustees for the time being, after my decease, to apply all or any part of the dividends, interest, and income arising from the portion of each or any or either of my children, of and in the said trust monies, stocks, funds, and securities, during his or her minority, in or towards his or her maintenance, education, schooling, clothing, pocket money, or advancement, in such manner as my trustee or trustees for the time being shall think fit (*a*); and also that it shall and may be lawful to and for my trustee or trustees for the time being to advance and pay to and for each or either of my children notwithstanding his or her minority, any part not exceeding one-half of the then vested or expectant share of the same child of and in the said trust monies, stocks, funds, and securities, either for placing out any such child, being a son, to any profession or employment, or in the purchase of a commission or commissions in the army, or in the education of any son in the University, or any other seminary of learning,

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(*a*) "Or during the widowhood of my said wife to pay the same to her, without any account to be rendered thereof, that she may apply the same in the maintenance, education, and support of the child or children respectively entitled thereto."

or any of the inns of court, or for the advancement or preferment in the world or in marriage of any such son (*a*); And I further direct that so much of the interest, dividends, and annual income, arising from the portion or share of each of the same children respectively, as shall not be applied for the maintenance, education, and advancement of the child respectively to whom the same portion or share shall belong (*b*) shall from time to time be added to the principal monies of the same portion or share, and be improved at interest, together with the same and as a part thereof, by way or in the nature of compound interest, and follow and be subject to all the trusts and dispositions hereinbefore expressed and declared concerning the principal of the same portion or share, until the principal monies or the securities on which the same shall be invested shall become payable, or is or are hereby directed to be paid and transferred as aforesaid (*c*).

(*a*) "And further, that all sums of money which shall be advanced to and for each child respectively shall be allowed and taken and considered as a part of the portion or share of such child or son respectively, and shall be deducted out of the share of the same child of such trust monies, notwithstanding his death before his portion shall be absolutely vested in him."

(*b*) "Nor paid to my said wife."

(*c*) "And I further direct, that the sum of £——, advanced to and for my son A. B., and the sum of £——, advanced to and for my son C. B., and the sum of £——, advanced to and for my son D. B., and also all sums to be hereinafter advanced to or for each or either of my children, and which shall be charged by me to the same child in an account kept or to be kept for that purpose, in my own handwriting, shall be added to and deemed a part of my said trust monies, stocks, funds, and securities, and deducted and taken from and out of the respective shares of my said trust monies, stocks, funds, and securities, which shall belong to the children respectively to or for whom the same sums of money respectively have been or shall be advanced."

Of maintenance and advancement of children after death of husband, in will of married woman.

LII. And I will, direct, and appoint, that (*a*) after the death of the said A. B. my husband (*b*), the interest, dividends, and income of the portion or share for the time being of and in the said trust monies, stocks, funds, and securities, which shall belong to each of the same children being a minor, shall or may be employed for his or her maintenance, education, advancement, or preferment in the world, in such manner, and at such time or times as my trustee or trustees for the time being, in his or their discretion, shall think fit; And further, that after the death of the said A. B., or in his lifetime with his consent in writing (*c*), any part not exceeding one-half of the then expectant or presumptive share of each or either of the same children respectively, who shall be a son, may be applied in, for, or towards the advancement or preferment in the world of the same child, either for placing him out to any trade or profession, or for his education at any university or universities, or any of the inns of court or of chancery, for the study of the law, or for the purchase of a commission or promotion in the army, or otherwise for the advancement in the world of the same son; And further, that so much &c., (vide Art. LI.)

Of maintenance and advancement to the children of each of two persons on whom different sums are settled.

LIII. Provided always, and it is hereby declared and agreed by and between all the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, his executors and administrators, after the death of each of them the said E. F. and G. H. respectively, to apply the dividends of the then vested or presumptive share of each of the children and other issue of each of them the said E. F. and G. H. respectively of and in the said trust monies, stocks, funds, and securities, in or for his or her clothing, maintenance, and education; and

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(*a*) "As to the said sum of £——, and second-mentioned sum of £——, from and."

(*b*) "And as to the said first-mentioned sum of £—— immediately from and after my death."

(*c*) "And as to the said first-mentioned sum of £—— at any time after my death."

also with the joint consent of the said H. C. H., and such one of them the said E. F. and G. H. as shall be the parent of each of the said sons, grandsons, and other male issue respectively, or with the consent of the survivor of them the said H. C. H. and such parent, and after the decease of such survivor, then in the discretion and of the proper authority of them the said A.B. and C. D., and either in the lifetime or after the death of such parent, to advance to or apply for the benefit of each of the same sons, grandsons, and other male issue respectively, any part not exceeding one-half of the amount or value of his then vested or expectant portion for the advancement or preferment in the world of the same son, grandson, or other male issue respectively; And further, that so much &c., (vide Art. LI.)

Special power and recommendation to trustees to apply interest of trust-monies or any part thereof, for use of testator's nephew; but this provision not to create any trust to that effect, with power to trustees to release this power and settle an annuity on the said nephew for his life, with special provisions. (In wills).

LIV. Provided always, and I hereby declare, that notwithstanding any of the trusts aforesaid, it shall and may be lawful to and for my said trustees, or the trustees or trustee for the time being of this my will, or the major part of them for the time being, or one-half of them in number, at any time or times hereafter, during the life of my nephew, the said A. B. the father, (and if he or they shall think fit, and by way of expressing my wishes and not of creating any trust, I hereby authorize and recommend them to do), to pay or allow to my said nephew, the said A. B. the father, for his personal use, all or any part of the yearly interest, dividends, and proceeds of my said trust property, as the same trustee or trustees, or the major part of them, or one-half in number of them may deem expedient; but it is my express will that neither this clause or power, nor any other matter or thing whatsoever herein contained, shall extend or be deemed or construed to extend to the giving or vesting any part of my said trust estate, monies, and effects, or the interest, dividends, and proceeds thereof, in the said A. B. the father absolutely, or to create any permanent or continuing trust for his benefit, it being my intention that any yearly or other allowance to be made to him out of the said annual interest, dividends, and proceeds of my estate, shall be in the entire discretion of my said trustees, or the trustees or trustee for the time being of this my will, and that he or they may

withdraw or continue such allowance, as he or they may think fit; and that the whole of my estate, monies, and effects shall be under the entire management and control of the same trustees and trustee; Provided always, and if my said trustees or trustee for the time being, or the major part of them, or one-half in number of them should deem it eligible, it shall and may be lawful to and for them or him to release and extinguish the power and authority hereinbefore contained, and in lieu thereof to give and settle to or on the said A. B. my nephew, any annuity or yearly sum for his life, not exceeding the income of my said trust property; but such annuity or income shall be and be considered as a gift from my said trustees or trustee, and not from me. And I declare and direct that my said trustees, or the trustees or trustee for the time being of this my will, shall not be answerable or accountable, either at law or in equity, to my said great-nephew the said A. B. the son, and C. B., or either of them, or their or either of their children, or any other person or persons whomsoever, for any money they may so pay or allow to the said A. B. the father out of the said annual interest, dividends, and proceeds of my estate, pursuant to the power and authority hereinbefore given to them for that purpose; on the contrary I declare that from and after such gift, but not in the mean time, the money to be given shall be and shall be considered as given to my said nephew by this my will.

To support the family in case of the disability of husband or wife. (In a marriage settlement).

LV. Provided also, and it is hereby further declared and agreed by and between the parties to these presents, as far as they respectively are interested, that if the said A. B. [*husband*] should, at any time or times, while the income of the said trust monies, stocks, funds, and securities shall be payable to him under the trusts and provisions hereinbefore contained (*a*), either by reason of illness, mental imbecility, confinement in foreign countries, or other incapacity whatsoever, be disabled from providing for the maintenance and support of himself and his said intended wife and their issue, (if any),

(*a*) His life interest was determinable on a particular event.

that then and in that case, and from time to time, as often as the same shall happen, and notwithstanding all or any of the trusts hereinbefore contained, it shall and may be lawful to and for the said trustees or trustee for the time being, during the continuance of such incapacity, to apply all or any part of the dividends, interest, and income of the said trust monies, stocks, funds, and securities, in or towards the maintenance and support of the said A. B., and C. D. his intended wife, and their issue, (if any), and in and towards the education and schooling of such issue, or in or towards any one or more of the purposes aforesaid, as circumstances shall require, in such manner as to the said trustees or trustee for the time being, or the major part of the said trustees, shall from time to time seem most proper and expedient; And also that, if at any time during the joint lives of the said C. D. and A. B., the said C. D., or the issue (if any) of the said intended marriage should not be maintained and supported by the said A. B. to the satisfaction of the said trustees or trustee for the time being, or the major part of the said trustees, or if the said C. D. should survive the said A. B., and be disabled by illness, mental imbecility, or any other incapacity whatsoever, from providing for the maintenance and support of herself or her issue (if any) by the said A. B., that then and in that case, and from time to time, as often as the same shall happen, it shall and may be lawful to and for the said trustees or trustee for the time being to apply any part, not exceeding one half, of the dividends, interest, and income of the said trust monies, stocks, funds, and securities, during the life of the said A. B., or until his life interest of and in the said trust monies, stocks, funds, and securities shall have been determined, by force of the provision hereinbefore contained in that behalf, and the whole or any part of the same dividends, interest, and income, after the death of the said A. B., or (which shall first happen) after his life interest therein shall have been determined as aforesaid, and during the life of the said C. D., in or towards the maintenance and support of the said C. D. and her issue (if any) by the said A. B., or in or towards the education and schooling of the same issue, or in or towards any one or more of the purposes aforesaid, as circumstances

shall require, as to the said trustees or trustee for the time being, or the major part of the same trustees, shall seem most proper and expedient; And that the receipt or receipts of the person or persons respectively to whom the said dividends, interest, and income, or any part thereof, shall at any time or times be paid, for all or any of the purposes aforesaid, shall be and be deemed an effectual discharge or discharges for so much of the same dividends, interest, and income, which shall be paid to him, her, or them, by such trustees or trustee, and shall discharge such trustees or trustee from being answerable or accountable for the misapplication or nonapplication thereof.

To invest a sum sufficient to produce a given annuity, and to apply the annuity weekly for the personal maintenance and for the separate use of the annuitant discharged of all claims of husband's creditors. (In wills).

LVI. And I also direct my executors hereinafter named, or the survivors or survivor of them, or the executors or administrators of the survivor of them, to lay out and invest in his or their name or names such sum of money in the purchase of a share or shares of the public stocks or funds of Great Britain, or at interest upon real securities in England, as by the interest, dividends, or annual produce thereof will produce the weekly sum of —— shillings; and weekly, on the Monday of every week, to pay the same to A. B., my servant, for and during the term of her natural life, for her support and maintenance, so and in such manner that she may receive the same for her sole use, separate and apart from and independent of any husband with whom she shall or may intermarry from time to time, and so and in such manner that she may not effectually anticipate, charge, assign, or encumber the growing payments thereof, and so and in such manner that the said weekly sum may not be subject to the claims of any person or persons to whom or in whose favour the said A. B., or any husband with whom she shall marry, shall attempt to sell, charge, or encumber the same, or of any person or persons to whom the said A. B. or her husband may become indebted, and so that the same may not be liable to the claims of creditors under a fiat of bankruptcy, or under any act for the relief of insolvent debtors. And I direct, that the receipts of the said A. B. alone, as well when covert as sole, and notwithstanding her coverture, shall be sufficient discharges for the said last-

mentioned weekly sum, and the first payment thereof shall be made on the first Monday next after my decease; and that, subject to the same weekly payment, the stocks, funds, and securities to be appropriated as a fund for the payment of the same weekly sum, shall be deemed a part of the residue of my personal estate, and be subject to all the trusts hereinafter expressed and declared concerning the same.

For trustees of a money fund to employ a certain part of the income in the maintenance of children, unless maintained by the mother to the satisfaction of trustees.

LVII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that in case the said A. B. [*wife*] shall not, after the death of the said C. B. [*husband*], and thenceforth during her widowhood, maintain and educate the children of the said C. B. and A. B., his wife, to the satisfaction of the said E. F. and G. H. [*trustees*], or the survivor of them, his executors or administrators, then, notwithstanding any of the trusts hereinbefore contained in favour of the said A. B., it shall or may be lawful to and for the said E. F. and G. H., and the survivor of them, his executors and administrators, to retain and take any sum not exceeding £—— a year during the widowhood of the said A. B., out of the dividends, interest, and income of the said trust monies, stocks, funds, and securities, and apply the said yearly sum of £—— in the maintenance and education of all or any one or more of the children of the said C. B. and A. B. his wife, in such manner and in such proportions as the said E. F. and G. H., or the survivor of them, his executors or administrators, shall think fit.

Of maintenance out of the rents of settled estates, with provisions for the investment and accumulation of the residue.

LVIII. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that if at any time or times the person or persons for the time being beneficially entitled to the possession, or to the rents, issues, and profits of the said manors, lands, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, shall be under the age of twenty-one years, discovert and unmarried, then and in such case, and so often as the same shall happen, they the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, do and shall,

(but subject and without prejudice to the annual sum or yearly rent-charge of £——, hereinbefore limited to the said G. H., and to the aforesaid powers and remedies for enforcing and compelling the payment thereof, and also subject and without prejudice to the terms of one thousand years and two thousand years hereby created, and to the trusts thereof respectively, and to the powers hereinafter by these presents given or reserved, and to the uses or estates to be thereby respectively created), during such minority and discoverture, or respective minorities or discovertures, enter into, and hold possession of, and receive and take the rents, issues, and profits of the said manors, lands, and other hereditaments, and by and out of the same pay and apply any annual sum or sums of money, according to the age or respective ages of such minor or minors respectively, not exceeding the clear yearly sum of £——, for or towards the maintenance and education of such minor or minors respectively; and do and shall, subject thereto, lay out and invest the same in their or his names or name, in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England, to be from time to time altered and varied as occasion shall require; and do and shall receive the interest, dividends, and annual produce of the said stocks, funds, and securities, and lay out and invest the same in or upon stocks, funds, or securities of a like nature, to be also altered and varied as aforesaid, so that the same rents, issues, and profits, stocks, funds, and securities, interest, dividends, and annual produce, and the resulting income and produce thereof, may, during such minority and discoverture, or respective minorities and discovertures, accumulate in the way of compound interest; And it is hereby agreed and declared, that the said A. B. and C. D., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said rents, issues, and profits, stocks, funds, and securities, interest, dividends, and annual produce, and the accumulations thereof respectively, upon trust, at the end of such minority or discoverture or minorities or discovertures respectively, or sooner if they shall think proper, to call in and convert the same respec-

tively into money, and by and out of the money to be produced thereby, to pay off and discharge any sum or sums of money which shall have been charged on the said manors, lands, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, under or by virtue of the trusts of the said term of two thousand years hereby created, or which shall have been charged upon the said manors and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, under or by virtue of the powers hereinafter for that purpose contained, or any of them; and subject thereto, do and shall lay out and invest the money so to be produced as lastly hereinbefore is mentioned, or so much thereof as shall remain after answering the purposes aforesaid, in the purchase of or upon freehold estates of inheritance, to be situated somewhere in that part of Great Britain called England, or in the principality of Wales, or of copyhold or leasehold lands convenient to be held therewith, or with the lands hereinbefore granted, released, and confirmed, or expressed and intended so to be; and do and shall settle and assure, or cause to be settled and assured, the lands and hereditaments so to be purchased as lastly hereinbefore is mentioned, in such manner as hereinafter is expressed with respect to the lands to be purchased with the money to be produced by any sale or sales which shall be made in exercise of the powers hereinafter for that purpose contained, of any of the hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be; And it is hereby agreed and declared, that the rents, issues, and annual produce of the lands to be purchased with the accumulations aforesaid shall, during such minority and discoverture or respective minorities and discovertures as aforesaid, be accumulated in like manner in the way of compound interest, and be applied upon and for such trusts, intents, and purposes as hereinbefore is mentioned with respect to the funds firstly hereinbefore directed to be accumulated.

Of maintenance out of rents of devised estates. (In wills).

LIX. Provided always, and I hereby declare, that if at any time or times the person for the time being beneficially entitled to the possession or to the receipt of the rents,

issues, and profits of the manors, lands, and other hereditaments hereinbefore by me devised and bequeathed respectively, shall be under the age of twenty-one years, then and in such case, and so often as the same shall happen, the said C. D. and E. F., and the survivor of them, and the executors, administrators, and assigns of such survivor, or other my said trustees or trustee for the time being, do and shall (but subject and without prejudice to the annual sum or sums which I have hereinbefore authorized to be limited by way of jointure, and to the securities for the same, and also subject and without prejudice to the sum or sums which I have hereinbefore authorized to be raised for the portions of younger children of my said sons and grandsons, and to the securities for the same respectively), during such minority or respective minorities, enter into and hold possession of, and receive and take the rents, issues, and profits of the said manors, lands, and other hereditaments hereinbefore devised and bequeathed respectively; and out of the same pay and apply any annual sum or sums of money, according to the age of such minor, not exceeding the clear yearly sum of £——, for or towards the maintenance and education of such minor; and do and shall, subject thereto, lay out and invest, &c., (vide Art. LVIII.)

For trustees to apply rents &c. towards maintenance and to place residue in funds, to accumulate for the benefit of children; and in case accumulation shall not vest in children, for next of kin. (In wills).

LX. Provided always, and I do hereby declare my mind and will to be, that if at any time during the lives of any child of my body, or within the period of twenty-one years to be computed from the decease of the survivor of such children, the person or persons for the time being entitled to the possession, or to the rents, issues, and profits of the said manors and other hereditaments, shall be under the age of twenty-one years and unmarried, then and in such case, and so often as the same shall happen, they the said A. B. and C. D. [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor (but subject and without prejudice to the powers hereinafter contained, and the uses and estates to be created thereby), shall, during such minority and discoverture or respective minorities and discovertures, receive and take the rents, issues, and profits of the said manors and other heredita-

ments, and apply a competent part thereof for or towards the maintenance, education, and support of the person or persons so for the time being entitled as aforesaid, and invest and lay out the surplus in the names or name of the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain, or upon real securities in England, to be from time to time altered or varied as he or they shall think proper; and do and shall receive the interest, dividends, and annual produce of the said stocks, funds, and securities, and lay out and invest the same in or upon stocks, funds, and securities of the like nature, so that the same rents, issues, and profits, interest, dividends, and annual produce may, during such minority and discoverture, or respective minorities and discovertures as aforesaid, accumulate; And I do hereby declare my will and mind to be, that the said A. B. and C. D., their executors and administrators, shall stand and be possessed of and interested in the said rents, issues, profits, stocks, funds, securities, interest, dividends, and annual produce, and the accumulations thereof respectively, in trust for such one or more of my said children, or their issue for the time being, being the person or persons entitled to the first estate in my said manors and hereditaments as shall first attain the age of twenty-one years after the commencement of the accumulations during such period of minority and discoverture, to and for his, her, or their own absolute use and benefit; and in case any of the same accumulations shall fail to vest in my said children or their issue, some or one of them, then I will that the said trust-monies, stocks, funds, and securities shall be in trust for such person or persons as shall at the time when such last-mentioned event shall take place be my next of kin, according to the statutes made for the distribution of intestates' estates, and in the same parts, shares, and proportions as they would be entitled under those statutes.

Of maintenance out of interest and rents, and of advancement. (In wills).

LXI. And it is my will, and I hereby direct, that it shall and may be lawful to and for my said trustees, and the survivor of them, his executors and administrators (subject and

without prejudice to the payment of the said annuities), to apply all or any part of the interest, dividends, and income of the said trust-monies, stocks, funds, and securities, and also all or any part of the rents of the said messuages or tenements, for the maintenance and education of the said A. B. during her minority; and in case of her death under the age of twenty-one years, then to and for the maintenance and education of the person or persons who for the time being shall be entitled either absolutely or in expectancy to the said messuage or tenement, trust-monies, stocks, funds, and securities respectively; and in case the son or grandson, sons or grandsons, or other male issue of any or either of my said sisters, shall become entitled to a vested interest in all or any part of the said trust-monies, stocks, funds, and securities, then it is my will that any part not exceeding one half of the share of each of the same sons, grandsons, and male issue respectively, of and in the said trust-monies, stocks, funds, and securities, may be advanced to the same son, grandson, or male issue respectively, in part of his said portion or share, for his or their advancement in the world, notwithstanding his or their minority; And it is my will, that so much of the interest, dividends, and annual income arising from the said trust-monies, stocks, funds, and securities, and the rents of the said messuage or tenement, as during the minority of the said A. B., or of any other person or persons who for the time being shall be entitled thereto, as shall not be applied for the maintenance, education, and advancement of the said A. B., and such other person or persons respectively to whom the same shall belong as aforesaid, shall be added to the principal of the said trust-monies, or to the respective shares thereof which shall belong to the said persons respectively, and be improved at interest, together with the same, by way or in the nature of compound interest, and follow and be subject to all the limitations, trusts, and dispositions hereinbefore declared of the same trust-monies and the respective shares thereof, until the same shall become absolutely vested under the trusts hereinbefore declared. And I direct, that when the said trust-monies shall become actually vested, the same shall be payable and paid to the person or persons entitled thereto (provided the same person

or persons shall be of the age of twenty-one years, or being a female or females, shall be married to a person of that age), notwithstanding the continuance of the lives or life of both or either of them the said C. D., and E. F. my wife, [*annuitants*], so as £—— in money, or £—— in 3 per cent. Bank Annuities, shall be reserved and retained by the said trustee or trustees to answer the growing payments of the said annuity or yearly sum of £—— during the continuance thereof, and so as £—— in money, or £—— in 3 per cent. Bank Annuities, shall be reserved or retained by the said trustee or trustees for the time being, to answer the growing payments of the said annuity of £—— or £——, as the case shall require, during the continuance of the same annuity.

That during minority of persons entitled to rents, same shall be applied on trust to pay taxes and repairs, interest of incumbrances and maintenance, surplus in reduction of incumbrances and redemption of land-tax &c., and afterwards in purchase of freehold property. (In wills).

LXII. Provided always, and I direct that during the minority of any person or persons who for the time being shall be entitled to the possession or to the receipt of the rents and profits of my said manor and hereditaments settled and also directed to be settled as aforesaid, the rents and profits of the same lands and hereditaments respectively shall be taken by the trustee or trustees for the time being of this my will; and that in the first place there shall be answered and paid thereout the annual and usual outgoings of taxes and repairs; and afterwards and in the next place, the interest of any incumbrance which shall affect the said lands and hereditaments or any of them; and in the next place, a competent sum or sums of money, in the discretion of the trustee or trustees, to be applied in the maintenance, education, and advancement of the person or persons respectively for the time being entitled to the possession, or to the receipt of the rents of the said lands and hereditaments respectively; and that the residue or surplus, if any, of the said rents, shall be applied in reducing or discharging the existing incumbrances, or in redeeming the land tax; and in case all such incumbrances shall be discharged, and all such land tax redeemed, then in the purchase of freehold hereditaments of inheritance, to be settled to the same or the like uses, upon the same or the like trusts, and for the same or the like ends, intents, and purposes, and under and subject

to the same or the like powers, provisoes, limitations, and directions, as are hereinbefore declared of and concerning the lands and hereditaments to be purchased with the surplus of the money arising from such sale or sales as aforesaid.

For the respective tenants for life and their sons when in possession, to sell lands intermixed with those of other persons. (In wills).

LXIII. Provided always, and notwithstanding any thing hereinbefore contained, it shall and may be lawful, to and for the said A. B., and his first and other sons, and also for the said C. D., and his first and other sons, and for the said E. F., and his first and other sons, and for the said G. H., and his first and other sons, or any of them, when respectively in possession of the premises by virtue of this my will, to bargain and sell in fee simple any of the lands hereby devised lying intermixed with other lands, so as lands of like value of any other person or persons, lying intermixed with or convenient for the lands hereby devised, be granted and conveyed to the uses above mentioned, in lieu of the lands to be bargained and sold as aforesaid.

Another form.

LXIV. And it is hereby provided, declared, and agreed, by and between all the parties to these presents, that notwithstanding any of the uses or trusts hereinbefore or hereinafter limited, expressed, declared, and contained, it shall or may be lawful to and for each of them the said A. B., C. D., and G. H., and his first and other sons, when and as each of them respectively shall be in possession or receipt of the rents of the said messuages &c., or any part of the same respectively, under the uses, trusts, or limitations hereinbefore contained, and with the consent in writing of the said I. K. during his lifetime, and after his death in the discretion of each of the same persons respectively, to bargain and sell in fee simple any of the same messuages &c., so as lands of equal or greater value of any other person or persons lying intermixed with or convenient for the messuages hereinbefore released &c., and hereinafter covenanted to be surrendered &c., shall be settled to the uses hereby limited or declared, or such of them as shall be subsisting and capable of taking effect, in lieu of the messuages &c. to be bargained and sold as aforesaid.

To sell and dispose of real estate, pay debts and legacies, &c.; after payment, re-invest monies and purchase lands, &c., and until purchase, money to be considered real estate.

LXV. And I hereby authorize and empower my said trustees, and the survivor or survivors of them, and the heirs and assigns of such survivor, at any time or times after my death, at his, her, or their will and pleasure, to sell and dispose of all or any part of my real and personal estates; and after paying my debts, legacies, and funeral expenses before mentioned, to reinvest and lay out the monies produced by such sale in the purchase of other lands and tenements; and till such purchase can be made, I direct that the money arising by such sale shall be considered as real estate, and be subject to the limitations declared of my said real estate (*a*).

To sell leasehold estates, and to invest the money upon the original trusts.

LXVI. Provided always, and it is hereby declared and agreed, that notwithstanding any of the trusts hereinbefore declared, all or any part of the said messuages &c. shall or may be absolutely sold and disposed of by the said A. B. and C. D. [*trustees*], or the survivor of them, his executors or administrators, with the consent in writing of the said E. F. and G. H., or the survivor of them, for any price which he or they shall think reasonable; and that in case of such sale, the money to arise or be produced from the same shall be paid to the said A. B. and C. D., or the survivor of them, his executors or administrators, without any necessity or obligation on the part of the purchaser or purchasers thereof, to see the application of such money, or any liability for the misapplication of the same, so as he, she, or they shall take the receipt or receipts of the said A. B. and C. D., or the survivor of them, his executors or administrators, for the same money; And further that the money arising from such sale or sales shall, with the consent in writing of the said E. F. and G. H. during their joint lives, and after the death of one of them with the consent in writing of the survivor of them, and after the death of the survivor of them, then in the discretion and of the proper authority of the said A. B. and C. D., or the survivor of them, his executors or administrators, be invested at interest on real or government securities; and that such securities (with such consent or in such

(*a*) This power is concise, but cannot be safely acted upon without many additional provisions.

discretion as aforesaid) shall be varied, and transferred from time to time, as occasion shall require; And moreover that the same money, and the securities in and upon which the same shall from time to time be invested, and also the interest and dividends thereof, shall be held upon the same or the like trusts as are hereinbefore expressed and declared of and concerning the messuages, &c. respectively, from which such money respectively shall arise or be produced, and of and concerning the rents and income of the same messuages or tenements and premises respectively.

LXVII. Provided always, and it is hereby declared and agreed, that notwithstanding any of the trusts hereinbefore declared, all or any part of the said messuages, &c. shall or may be absolutely sold and disposed of by the said A. B. and C. D., and the survivor of them, his executors or administrators, with the consent in writing of the said E. F. and G. H., or of the survivor of them, for any price which he or they shall think reasonable, and that in case of such sale the money to arise or be produced from the same shall be paid to the said A. B. and C. D., or the survivor of them, his executors or administrators, without any necessity or obligation on the part of the purchaser or purchasers thereof to see the application of such money, or any liability for the misapplication of the same, so as he, she, or they shall take the receipt or receipts of the said A. B. and C. D., or the survivor of them, his executors or administrators, for the same money; And further that the money arising from such sale or sales shall, with the consent in writing of the said E. F. and G. H. during their joint lives, and after the death of one of them, with the consent in writing of the survivor of them, and after the death of the survivor of them, then in the discretion and of the proper authority of the said A. B. and C. D., or the survivor of them, his executors or administrators, be invested at interest on real or government securities, and that such securities, with such consent or in such discretion as aforesaid, shall be varied and transposed from time to time, as occasion shall require; And moreover that the same monies and the securities in and upon which the same shall from time to time be invested, and also the interest and dividends thereof, shall be held upon the same or

Another form.

the like trusts as are hereby expressed and declared of and concerning the messuages, &c. respectively, from which such money respectively shall arise or be produced, and of and concerning the rents and income of the same messuages or tenements and premises respectively.

To sell leaseholds, and to convert into money sum in stocks; to invest produce, vary securities, on trusts declared; power to trustees to purchase annuity with money produced by repurchase of a former annuity, and to insure same if for one life only, and pay expenses and trusts of such annuity, and insurance-money.

LXVIII. Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors, administrators, or assigns of such survivor, at any time or times, and from time to time, during the life of the said G. H., with the consent of the said G. H., to be testified by some writing under her hand, and after her decease, then in the discretion and of the proper authority of them the said A. B. and C. D., or the survivor of them, his executors or administrators, either by public sale or private contract, to sell and dispose of the said leasehold messuages, &c. for the residue of the term hereby granted therein, and also to sell and dispose of and convert into money all or any part of the said sum of £—— 3 per cent. Consolidated Bank Annuities, and to lay out the money arising from such sale or disposition, or to be received for the repurchase of the said annual sum of £——, in or upon any of the government stocks or funds of Great Britain, or real securities in England or Wales, and alter, vary, and change the securities in or upon which the same trust monies shall from time to time be invested, as occasion shall require, or as the said G. H., and after her decease, then as the said A. B. and C. D., or the survivor of them, and the executors, administrators, or assigns of such survivor, shall think fit; And that all such trust monies, stocks, funds, and securities shall be held upon, under, and subject to the same or the like trusts, and for the same or the like ends, intents, and purposes as are hereinbefore expressed and declared of and concerning the said sum of £—— 3 per cent. Consolidated Bank Annuities. Provided always, and all or any part of the sum to be received for the repurchase of the said annual sum of £—— shall or may be laid out or invested by the said trustee or trustees for the time being, at any time during the

life of the said G. H., and at her request, and by her direction and appointment, to be testified by any writing under her hand, in the purchase of any other annuity or annuities on a life or lives, to be or not to be subject to be repurchased; and that every annuity to be so purchased, and the money (if any) to be paid for the repurchase thereof, shall be held upon, under, and subject to the same or the like trusts, and for the same or the like ends, intents, and purposes, as are hereinbefore expressed and declared of and concerning the said annual sum of £——, and money to be received for the repurchase thereof. Provided always, and in case any annuity to be so purchased shall be purchased for one life only, or the same, or the said annual sum of £—— shall eventually be held for one life only, then and in that case the amount of the price paid or to be paid for the purchase of such annuity or yearly sum shall from time to time, when circumstances will permit, be insured in the name or names of the trustee or trustees for the time being of these presents, in one of the public offices of insurance in London or Westminster, payable on or shortly after the death of the person for whose life each such annuity respectively shall be held; and the premiums and other expenses of and attending such insurance shall be answered and paid out of the said annuity or annual sum respectively, and that the money to become due and be received under or by virtue of each such insurance respectively shall be held upon, under, and subject to the same or the like trusts, provisions, and regulations, as if the same insurance money were money payable and paid for the repurchase of the said annuity.

For trustees to sell all or any part of premises conveyed before the time limited in the trusts, so as the same be sold at the full value, to be ascertained by certain persons.

LXIX. Provided always, and notwithstanding all, any, or either of the trusts hereinbefore expressed and declared, it shall or may be lawful to and for the said A. B., his heirs or assigns, at any time prior to a sale, under the trusts hereinbefore declared, to sell, or contract and agree to sell, all or any part or parts of the said lordship or manor, hereditaments and premises, hereby released or otherwise assured, or intended so to be, so as he or they shall sell the same at a price equal to the value thereof, as the same value shall be ascertained and certified by E. F., G. H., and I. K., or any

two of them, and so as the purchase-money when paid shall be paid to the said C. D. and E. D., or the survivor of them, his executors, administrators, or assigns, upon the trusts hereinbefore declared thereof, or otherwise in satisfaction of some or one of the incumbrances affecting the said lordship &c. hereinbefore mentioned, and being prior to the mortgage thereof made to the said C. D., and hereinbefore recited. And that the said A. B., his executors, administrators, or assigns, and also the said C. D. and E. D., or the survivor of them, his heirs or assigns, shall or will join or concur, and shall be compellable to join and concur in such sale or sales, and in making and executing all such acts, deeds, and assurances, as shall be necessary to carry the same sale or sales into complete execution.

To sell out bank annuities and reinvest the produce upon the same trusts.

LXX. Provided always, and it is hereby declared and agreed by and between the said parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors, administrators, or assigns of such survivor, from time to time, during the lives of the said E. F., and G. H. his intended wife, and the life of the survivor of them, with the consent of the said E. F. and G. H., or the survivor of them, to be testified by some writing under his, her, or their hand or hands, and after the decease of the survivor of them, then in the discretion and of the proper authority of them the said A. B. and C. D., or of the survivor of them, his executors or administrators, to sell out and dispose of all or any part of the said sum of £—— Bank Annuities, and lay out and invest the produce thereof in or upon any other of the government stocks or funds of Great Britain, or upon real securities in England or Wales, and from time to time to alter, vary, and change the securities in or upon which the same produce shall from time to time be invested, either as occasion shall require, or as the said E. F. and G. H., or the survivor of them, and after the decease of the survivor of them, then as the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, in his or their discretion shall think fit, and that the money arising from the sale of all or any part of the said sum of £——

Bank Annuities, and the stocks, funds, and securities in or upon which the same money, or any part thereof, shall from time to time be invested; and the interest, dividends, and income thereof shall be held upon, under, and subject to the same or the like trusts, and for the same or the like ends, intents, and purposes as are hereinbefore expressed and declared of and concerning the said sum of £—— Bank Annuities, and the dividends, interest, and income thereof.

To convert household furniture &c. into money, and to apply the money in purchase of other household furniture &c., or to invest the money on government or real securities, and stand possessed &c. upon certain trusts.

LXXI. Provided always, and it is hereby agreed and declared by and between all the parties to these presents, that it shall or may be lawful to and for the said A. B. and C. D., or the survivor of them, his executors or administrators, at any time after the decease of the said E. F., unless she shall direct the contrary, or in her lifetime, with her consent in writing, to sell, dispose of, and convert into money all or any part of the said household furniture and other scheduled articles, and to apply the produce of such sale in the purchase of other household furniture, or such like articles, or to lay out and invest the same produce in government or real securities; and stand and be possessed of such new purchased furniture and other articles, upon the same or the like trusts as are hereinbefore declared of the furniture and other articles which shall be sold; and stand and be possessed of the stocks, funds, and securities, in and upon which the said produce shall be invested, and also of the money arising from such sales in the meantime till invested, upon the trusts hereinbefore expressed and declared concerning the trust monies, stocks, funds, and securities hereinbefore settled.

To sink part of settled monies in an annuity to increase the income, and to make insurance for securing annuity (*a*).

LXXII. Provided always, and it is hereby further declared and agreed, by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that for the purpose of increasing the income of the said G. H. during her life, it shall or may be lawful to and for the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, or other trustee

(*a*) Vide Art. LXVIII.

or trustees for the time being, upon the request and at the instance of the said G. H., either while covert or sole, to lay out and apply all or any part of the said second mentioned sum of £——, or the produce of the stocks, funds, and securities in or upon which the same shall be invested, in the purchase of one or more annuity or annuities for the life of the said G. H., or for the life or respective lives of the grantor or grantors respectively [or any other life or lives], and to accept such security or securities for the same annuity or annuities as the said trustee or trustees for the time being, with the consent and approbation of the said G. H., shall in his or their discretion think fit, either subject or without being subject to be repurchased. And further, that in case any such annuity or annuities shall be for any other life or lives than the life of the said G. H., then and in that case the said trustee or trustees shall and may, in his or their discretion, by and out of the same annuity or annuities respectively, make an insurance on the life or lives of the person or persons for whose life or lives respectively the same shall be granted, so as to secure all or any part of the said purchase-money, in case of the determination of such annuity or annuities for life or lives; and that any sum or sums of money which shall become due during the life of the said G. H., under or by virtue of such insurance, or shall be received on any repurchase, shall be liable to be reinvested, at such instance and request as aforesaid, in the purchase of another annuity or annuities, and so from time to time, as the case shall require; and that the annuity or annuities which from time to time shall be purchased as aforesaid, shall be held and applied upon the same or the like trusts, and for the same or the like ends, intents, and purposes as are hereinbefore expressed and declared of and concerning the dividends, interest, and income of the said second mentioned sum of £——, and the stocks, funds, and securities in or upon which the same are to be invested; and that such sum or sums of money as from time to time shall become due under or by virtue of any insurance as aforesaid, or which shall be received on the repurchase of any such annuity or annuities, shall, unless invested or applied as aforesaid in the purchase of another annuity or annuities, and also in the

meantime and from time to time, until the same shall be so invested or applied, be held and applied upon, under, and subject to the same or the like trusts, and for the same or the like ends, intents, and purposes as are hereby expressed and declared of and concerning the said second mentioned sum of £——, and the stocks, funds, and securities in or upon which the same shall from time to time be invested.

To sell or mortgage freehold and copyhold, in case the personal assets shall not, at a stated period, be sufficient to pay legacies, with provision for indemnity of purchasers, &c. When all legacies paid, executors to release this power; money remaining or arising after all legacies paid, to be applied in payment of mortgages and purchasing of other lands, to be settled to same uses as those sold (*a*).

LXXIII. And in case the said A. B. and C. D., or the survivor of them, his executors or administrators, shall not, at the end of six calendar months after my death, be able to collect money sufficient to pay all the legacies hereby given and bequeathed (except the legacies bequeathed to charities), then I hereby authorize and empower the said A. B. and C. D., and the survivor of them and the executors or administrators of such survivor, either by a sale or mortgage of all or any part of my freehold and copyhold messuages &c., and the fee-simple and inheritance thereof, or by a mortgage of any term of years to be created out of the said freehold messuages &c., to raise such sum or sums of money as he or they shall in his or their discretion deem necessary for answering and paying such legacies, or so many of them as shall remain unpaid, and the costs and charges of raising the same; And it is my will, and I do hereby direct and appoint, that the person or persons respectively who shall become the purchaser or purchasers, or take a mortgage or mortgages of the said freehold and copyhold messuages &c., or any of them, his, her, or their heirs, executors, or administrators, shall not be obliged or required to see the application of the money to be advanced or paid by him, her, or them respectively as the consideration of such purchase or purchases, mortgage or mortgages, or be answerable or accountable for the misapplication or nonapplication of the same money, or any part thereof, after the same shall have been paid to or to the order of the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns (*b*),

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(*a*) This power precedes the devise of the land made subject to it.

(*b*) Or,—

"Of the acting trustee or trustees for the time being of this my will."

or be obliged or required to inquire whether any such sale or sales, mortgage or mortgages, is or are necessary for the purposes hereinbefore mentioned; and that every receipt which shall be given by the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, for such purchase or mortgage money, or any part thereof, shall be a good, valid, and sufficient acquittance and discharge for the sum or sums of money which therein or thereby respectively shall be acknowledged or expressed to be or to have been received (*a*). And I further direct, that when and as soon as all the said legacies shall be paid or retained, the said A. B. and C. D., or the survivor of them, his executors or administrators, shall release the power or authority hereby given to him and them; and that after such release, no person or persons shall be obliged or required to inquire whether all or any of the said legacies remain unpaid: And in case any sale or sales, mortgage or mortgages, shall be made of all or any part of the said freehold and copyhold messuages, lands, tenements, and hereditaments, in pursuance of the power hereinbefore contained, then I further direct, that any money which shall afterwards be collected or received on account of my personal estate shall be applied in discharge of such mortgage or mortgages; and that the amount of any money which shall have been raised by any sale or sales [or the amount thereof], and also any money arising from such sale or sales, mortgage or mortgages, and which shall remain after answering the purposes aforesaid, shall be laid out in the purchase of other lands, to be settled at the expense of my personal estate, to the same or the like uses as the lands to be sold shall stand limited at the time of the sale thereof respectively; and subject and without prejudice to the power or authority hereinbefore contained, I give, devise, &c.

(*a*) "And that the certificate or declaration of the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, that he and they have or hath not been able to collect money sufficient to pay all the legacies hereby given and bequeathed, except as aforesaid, shall be conclusive evidence of the fact."

For trustees for sale to reconvey on the payment of a particular debt, although other debts to be raised under the trusts which are declared shall not have been discharged.

LXXIV. Provided always, and it is hereby declared and agreed, by and between the parties to these presents, that notwithstanding any thing hereinbefore contained, if the said A. B., his heirs, executors, administrators, or assigns, do and shall, at any time before such sale as aforesaid shall be made, pay to the said C. D. and E. F., or the survivor of them, his executors, administrators, or assigns, the said sum of £——, and all interest then due for the same, it shall or may be lawful to and for the said C. D. and E. F., or the survivor of them, his heirs or assigns, to reconvey the said messuage &c. hereby released or otherwise assured, or intended so to be, unto and to the use of the said A. B., his heirs or assigns, or as he or they shall direct or appoint, absolutely discharged of and from the trusts hereinbefore declared for securing the payment of the said sum of £——, and the interest thereof, although the said sum of £——, and the interest thereof, or any part of the same, shall continue due and owing on the security of the same messuages &c., or any of them.

That trustees for the purpose of effectuating any sales may set apart purchase-money for the indemnity of purchaser (*a*). (In wills).

LXXV. And I further direct, that for the purpose of giving effect and carrying into execution any sale or sales to be made under the trusts of this my will, it shall and may be lawful to and for the trustee or trustees for the time being of this my will to consent that all or any part of the money to arise from such sale or sales shall or may be appropriated or set apart, either in the name or names of the said trustee or trustees, or of any other trustee or trustees to be appointed for that purpose, for a given time or till a given event, to be limited in that behalf, as an indemnity to the purchaser or purchasers of the same land respectively, and his, her, or their heirs, executors, administrators, or assigns, in such manner and upon such terms as my said trustee or trustees in his or their discretion shall think fit.

To transfer the incumbrances of one estate to

LXXVI. Provided always, that notwithstanding any of the trusts hereinbefore contained, it shall be lawful for the said

(*a*) Where a testator, giving trusts for sale, has only a doubtful title, this is a very useful clause.

another, and make an insurance for answering a contingent annuity, and appropriate a fund for payment of such insurance and expenses, and another fund for the indemnity of purchasers for a given period or event.

trustees or trustee for the time being, in his or their discretion, from time to time to transfer all or any one or more of the charges and incumbrances from any one or more of the said trust estates to any other or others of them, or to make any one or more of the said trust estates a fund for the indemnity of any other or others of them against the said charges and incumbrances, and so from time to time as often as occasion shall require; and also to make an insurance on the life of the said A. B., so as to provide a fund for answering and paying the said annuity of £——, and to appropriate a fund for answering the premiums and other incidental expenses of such insurance, or to buy a like annuity of £—— for the life of the said C. D., to commence on the death of her said husband, to be a fund either for answering the same annuity, or to be settled in lieu and satisfaction thereof, or to be an indemnity to the person or persons who shall purchase the said trust estates, charged or chargeable with the same, and to retain out of the said trust monies all payments which shall be made by the same trustee or trustees for any of the purposes mentioned in this provision; and also to appropriate and set apart a sufficient part of the money to arise by such sale or sales, either in the name or names of the same trustee or trustees, or any other trustee or trustees to be appointed for that purpose, for a given time, or until a given event to be limited in that behalf as an indemnity to the purchaser or purchasers of the same trust estates respectively, and his, her, or their heirs, executors, administrators, or assigns, against the said annuity, in such manner and upon such terms as the said trustee or trustees for the time being in his or their discretion shall think fit; and subject thereto, upon the trusts hereinbefore declared thereof.

To appropriate a sum in purchase of £3 per cents.

LXXVII. Provided always (*a*), and I direct that it shall or may be lawful to and for my trustee or trustees for the

(*a*) Variation of this form; the object being to throw the charge of the annuity at once upon the personal estate:—

"And it is my will, and I hereby direct that my executors and trustees hereinafter named shall within —— calendar months next after my decease, appropriate and set apart in

time being to set apart in his, her, or their name or names, a sum or sums of money in the purchase of £3 per cent. Consolidated or £3 per cent. Reduced Annuities, as a fund to answer such and so many of the said several annuities as are severally of an amount under £—— a year; and that immediately after such appropriation, and a declaration of trust executed by the same trustee or trustees, such and so many of the said annuities as shall be secured by £3 per cent. Consolidated or £3 per cent. Reduced Annuities, and by dividends thereon equal to answer the same annuities, shall cease to be a charge on any other part or parts of my trust estate, and the same trust estate shall be discharged from the same annuities accordingly; and that the £3 per cent. Consolidated or £3 per cent. Reduced Annuities, to be so purchased, shall, subject and without prejudice to the same annuities during the continuance thereof, be held upon, under, and subject to the same trusts as are hereinbefore expressed and declared of and concerning my said trust monies, stocks, funds, and securities.

as a fund to answer annuities under a certain amount, and after such appropriation such annuities to cease to be a charge on estates, and £3 per cents. so purchased to be held on trusts declared of other trust-monies. (In wills).

LXXVIII. Provided always, and I hereby direct, that if any person or persons entitled to be tenant or tenants of an estate tail in possession of the lands and hereditaments to be purchased with such trust monies, or any part thereof, shall, before the application of such trust monies, require the same money, or the part or share thereof which shall be equal to his, her, or their part or share in the lands and hereditaments directed to be purchased as aforesaid, to be

For trustees on application of persons entitled to be tenant or tenants in tail in possession of lands directed to be purchased, to pay money as share for such purchase to him or them, dis-

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his or their name or names an adequate sum of money by and out of my personal estate in the purchase of £3 per cent. Consols, or £3 per cent. Reduced Annuities, as a fund to answer the said annuity of £——, and that immediately after such appropriation, and a declaration of trust &c. [*as above*], the said annuity shall cease to be a charge on any other part or parts of my estate; and from that time all my real, and the residue of my personal estate shall be exonerated and discharged from the payment of the same annuity."

charged from trusts; and indemnity to trustees. (In wills).

paid to him, her, or them respectively, then and in that case such money shall be paid to him, her, or them respectively, by the trustee or trustees of the same money; and the same money shall be discharged of and from all the trusts hereinbefore contained, for the investment and application of the same money in the purchase of lands and hereditaments directed to be purchased and settled as aforesaid; and the said trustee or trustees shall be, and is by this my will declared to be indemnified in making such payment, any thing hereinbefore contained to the contrary notwithstanding.

For trustees to pay trust-monies to son while in trade, on his request in writing; and freeing money so paid from trusts. (In wills).

LXXIX. Provided always, and it is my will, and I do hereby expressly declare, that in case my said son A. B. shall at any time or times personally, and when in trade, demand of my said trustee or trustees for the time being the payment of all or any part of the said trust monies by any note in writing under his hand, it shall and may be lawful to and for my said trustee or trustees, and he and they is and are hereby directed and required, upon every such demand, to pay to my said son A. B. for his own absolute use and benefit, so much and such parts of the same trust monies, of which the payment shall from time to time be so demanded, or to transfer or assign to my said son A. B. the stocks, funds, or securities in or upon which the trust monies so required shall be then invested. And it is my will, and I do hereby further declare, that from and immediately after every such payment, transfer, or assignment, so much of the same trust monies, stocks, funds, and securities, as shall from time to time be so paid, transferred, or assigned, shall be paid and absolutely discharged of and from the trusts, provisoes, and declarations in this my will declared and contained concerning the same.

To pay share of trust-monies of issue to guardian or guardians to be held on like trusts, and such guardians to be trustees with like powers, instead of present trustees; and

LXXX. Provided always, and it is hereby further declared and agreed by and between the said parties hereto, as far as they respectively are interested, and the said E. F. and G. his wife do hereby direct and appoint that it shall and may be lawful to and for the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, or the trustee or trustees for the

time being, to pay the share or shares of the said trust monies, stocks, funds, and securities, and the dividends, interest, and annual income thereof, to which the issue respectively of each or any of them the said I. K., L. M., and N. O., who may happen to die in the lifetime of the said E. F. and G. his wife, or of the survivor of them leaving issue, shall be or be presumptively entitled under or by virtue of the trusts hereinbefore contained; and also the share of and in the same trust monies, stocks, funds, and securities, and the dividends, interest, and annual income thereof, to which the said B. B. or his issue shall be entitled under or by virtue of the same trusts, unto the guardian or guardians respectively of the said B. B., and of each or any of such issue respectively; to be held by the same guardian or guardians respectively upon the same trusts, and for the same ends, intents, and purposes, and under and subject to the same powers, provisoes, declarations, and agreements, as are in these presents limited, expressed, and declared of and concerning the same portion or portions respectively; and that after such payment such guardian or guardians shall become and be a trustee or trustees of the trust monies, stocks, funds, and securities which shall be paid or delivered to him, her, or them, in the place or stead of the trustee or trustees for the time being of these presents, and with all the same powers and authorities as may be exercised by the same trustee or trustees; And that the receipt of such guardian or guardians shall be and be deemed an effectual discharge for the trust monies, stocks, funds, and securities, which shall be paid or delivered to him or them by such trustee or trustees, and shall discharge such trustee or trustees of and from any obligation to see to the application of the same trust monies, stocks, funds, and securities, or to be answerable for the misapplication or nonapplication thereof.

their receipt, discharges; and indemnity to trustees from application.

LXXXI. And I further direct that any money arising from the same legacy, or from my real or personal estate, which under the trusts of this my will shall be payable to any of the children of my said sister, shall or may be paid to the person or persons who shall for the time being be the guardian or guardians of the same child or children according

To pay legacy or portions of minors to guardians, their receipts to be discharges, and certificate of principal magistrate of town

abroad evidence of right, and identity of guardians, and payment to be made to him or his attorney. (In wills).

to the laws of the country in which the same child or children shall be resident; and that the receipt of such guardian or guardians for such portion or portions, or the interest thereof, shall be an effectual discharge as against such child or children, and all persons claiming under him, her, or them; and that the certificate of the principal magistrate of the town or place in which such child or children shall be resident, of the right of any person or persons to be deemed guardian or guardians, or of the identity of the same person or persons, shall be full and conclusive evidence of the fact; and that such payment shall or may be made to such guardian or guardians in person, or to his or their attorney or attornies lawfully authorized for that purpose, and without any responsibility for the acts or misconduct of any person or persons so authorized.

For trustees to carry on the plantation trade of the testator during minority of his sons. (In wills).

LXXXII. And I further direct and declare, that it shall and may be lawful to and for my said trustee or trustees for the time being, during the minority of my said sons respectively, and as to the shares of such of the same sons respectively as for the time being shall be minors, to crop, stock, cultivate, manage, improve, and carry on the business of my said plantations and estate, which constitute a part of the residue of my real estate, in such manner as he or they in his or their discretion shall think most advisable; and for that purpose to employ such agents, factors, and attornies, and to appoint such merchants and consignees, as he or they in his or their discretion shall think proper; and to make to them such allowances and commissions as he or they shall deem reasonable; and to procure and take up, either on credit or otherwise, such stores, supplies, and other necessaries, as from time to time shall be wanted for the purpose of carrying on the business of the said trust estates with the greatest chance of success; and from time to time to change the said agents, factors, attornies, merchants, and consignees, and to appoint others as he or they in his or their discretion shall deem advisable; and that in all respects my said trustee and trustees shall have the same or the like discretionary powers in the management of my concerns as I myself, if living, could or might have exercised.

To refer to arbitration &c. any question as to the construction of recited instruments, or as to the amount of shares &c. &c. (Inserted in a settlement of an undivided share of personalty).

LXXXIII. And also that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, his executors and administrators, to settle and adjust, or compromise, or refer to arbitration, or arbitration and umpirage, any doubt or question which may arise relative to the construction or operation of all or any of the instruments hereinbefore recited, or to the amount of the share or respective shares of her the said G. H. of and in the said trust monies and effects under the same, or any other difference which, in the execution of the trusts of these presents, shall or may arise between them the said A. B. and C. D., or the survivor of them, his executors or administrators, and the said executors or administrators of the said I. K. and L. M. respectively, or the said trustees or trustee for the time being of the said in part recited indenture of settlement, or any other person or persons entitled or claiming to be entitled to any part, share, or interest in the said trust monies and effects respectively; and also to sign and allow the accounts of such executors and administrators, and trustees and trustee for the time being, on such evidence as they the said A. B. and C. D., or the survivor of them, his executors or administrators, shall think proper to admit; and also to consent that any specific part of the said personal estates and effects respectively may be given to and taken by any person or persons entitled to a distributive share thereof, in part or in lieu of such distributive share, and to settle and admit the value of such specific effects respectively; and that all acts which shall be done by the said A. B. and C. D., or the survivor of them, his executors or administrators, in pursuance or by virtue of all or any of the authorities hereinbefore contained, shall be binding and conclusive on all persons entitled to any benefit under the trusts hereinbefore contained.

To settle and adjust amount of money due to mortgagees and annuitants; with a provision, that if certain specified debts shall be paid before sale made,

LXXXIV. And that the said A. B. and C. D., or the survivor of them, and the executors, administrators, or assigns of such survivor of them, shall be competent and have full power to settle and adjust the amount of the principal monies due, and interest due and owing or to become due and owing on all, any, or either of the said mortgages or annuities prior to the mortgage of the said E. F.; Provided always, and it is

owner shall be entitled to call for a reconveyance, notwithstanding the existence of other incumbrances. (In a deed in trust for sale, to follow the clause of indemnity of purchasers).

hereby further declared and agreed by and between the parties to these presents, that if the said several sums of £—— and £——, and expenses of any renewal, and the interest thereof, and the amount of balance of charges to be paid to Messrs. S. & S. shall be paid before any such sale or sales as aforesaid shall be made, then on or at any time after payment of the costs, charges, and expenses, if any, of the said A. B. and C. D., their heirs, executors, administrators, and assigns, in the execution of the trusts hereinbefore contained, and his or their advances on account of the same trusts, the said G. C., his heirs or assigns (if he or they shall think fit), shall be entitled to call for a reconveyance or assignment of the said lordship or manor, hereditaments and premises hereby released or otherwise assured or intended so to be, notwithstanding the existence of other incumbrances prior to the mortgage made to the said E. F. as is hereinbefore mentioned or recited, any thing hereinbefore contained to the contrary in any wise notwithstanding.

To collect and receive rents and give acquittances.

LXXXV. And it is hereby agreed and declared, that it shall and may be lawful to and for the said A. B., during the continuance of the said term, to collect and receive all and every the rents and profits of the said messuages, lands, hereditaments, and premises hereinbefore granted and demised, or expressed and intended so to be, of and from the respective tenants and occupiers thereof, when and as the same shall from henceforth become due and payable; and upon payment thereof, or any part thereof, to make, sign, and give acquittances and discharges for the same; and in case of the non-payment thereof, to take such lawful remedies by action, suit, distress, or otherwise, for recovering the same, as shall be requisite or necessary in that behalf; and to do, perform, and execute all other matters and things needful and necessary for collecting, receiving, and getting in the same rents, issues, and profits, and every part thereof, as fully and effectually, to all intents and purposes, as the said C. D. and E. F. could themselves do if personally present.

To lay out money upon land, with power

LXXXVI. Provided always, and it is hereby agreed and declared between and by the said parties to these presents,

that it shall be lawful for the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, at the request of the said E. F., and G. H. his intended wife, or the survivor of them (testified by some writing under their, his, or her hands or hand), to call in and convert into money the said trust monies, stocks, funds, and securities, or any part thereof, and lay out and invest the money to be produced thereby in the purchase of any manors, messuages, lands, or hereditaments in England or Wales, of the tenure of freehold or copyhold of inheritance, and also of leasehold lands and tenements convenient to go along with or be held therewith, for any term or number of years, of which not less than sixty years shall be to come and unexpired at the time of such purchase: And the manors, messuages, lands, tenements, and hereditaments so to be purchased, shall be conveyed or assigned respectively unto and to the use of the said A. B. and C. D., their heirs, executors, administrators, or assigns respectively, according to the tenure of the same premises; and that the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor respectively, shall, with the consent of the said E. F. and G. H., during their joint lives, and after the decease of one of them with the consent of the survivor of them during his or her life, (testified by some writing under their, his, or her hands or hand), and after the decease of such survivor, at the discretion of the said trustees and trustee for the time being, re-sell the said manors, messuages, lands, tenements, and hereditaments, either altogether or in parcels, by public auction or private contract, in such manner and for such price or prices as they shall think fit; and that the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand possessed of and interested in the monies arising by such sale or sales, upon and for the trusts, intents, and purposes which would then be subsisting and capable of taking effect in the said trust-monies, stocks, funds, and securities by virtue of these presents, if the same had not been called in and converted into money, and invested in the purchase of such manors, messuages, lands, tenements, and hereditaments; and that all

to sell and to lease at rack rent.

such lands, tenements, and hereditaments which shall be purchased as aforesaid, shall be considered as personal estate, and be subject to the same trusts, in all respects, as the trust-monies invested in the purchase thereof would have been subject to if the same had not been purchased; and that the rents, issues, and profits thereof shall be paid and applied to the persons and in the manner to whom and in which the interest and annual produce of the said trust-monies laid out in the purchase thereof would have been applicable, under or by virtue of the trusts hereinbefore declared, in case such purchase had not been made; and that until the sale of the said manors, messuages, lands, tenements, and hereditaments, it shall be lawful for the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, with such consent or at such discretion as last aforesaid, from time to time to demise the same or any part thereof, for any term or number of years not exceeding twenty-one years in possession, at rack-rent, in such manner as they shall think proper.

Another form.

LXXXVII. Provided always, and it is hereby directed, declared, and agreed, by and between the said parties to these presents, that it shall and may be lawful to and for the said trustees or the survivor of them, his executors or administrators, if thereunto requested by the said A. B. and C. D., or the survivor of them, by any writing under his, her, or their hand or hands, from time to time to lay out or invest all or any part of the said stocks, funds, and securities as aforesaid, or the produce thereof, or the stocks, funds, and securities in or upon which the same produce shall be invested from time to time, or of the lands which shall be purchased from time to time and sold as hereinafter mentioned, in the purchase of lands or tenements in England, or in the principality of Wales, and held either in fee-simple, or for any long and absolute term of years, of which sixty years at least shall at the time of such purchase remain unexpired; and upon such request as aforesaid, or after the death of the survivor of the said A. B. and C. D., in his or their discretion, and of his or their own authority, to convert such lands and tenements into money by a sale thereof, and stand and be possessed of the money arising from such sale, upon the same or the like

trusts as are hereby declared of the money which shall be invested in the purchase of the lands and tenements to be from time to time purchased; and from time to time, until such sale, to make such leases of the lands and tenements at full improved rents, for any term or number of years not exceeding fourteen years, as the said A. B. and C. D., or the survivor of them, shall require; and after the decease of such survivor, then as the said trustees or the survivor of them, his executors or administrators, shall think fit; and also in the meantime, till such sale, to apply the rent and income of the lands and hereditaments to be so purchased, in the same manner and for the benefit of the same persons, and in the same proportions as the interest of the money to be invested in such purchases of the lands and tenements respectively would have been applicable in case such purchase had not been made, and in all other respects to stand and be seised of or interested in the lands and tenements to be purchased from time to time as aforesaid, under and subject to the same trusts as if the lands and hereditaments were personal estate, and so and in such manner, that on a sale of the same lands and tenements, or any of them, the person or persons who shall have become the purchaser or purchasers thereof shall not be under any obligation to see to the application of the purchase money, or be answerable or accountable for the misapplication or nonapplication of the same: Provided always, and it is hereby further declared and agreed, that it shall and may be lawful to and for the trustees, or the survivor of them, his executors, administrators, or assigns, from time to time during the joint lives of the said A. B. and C. D., and the life of the survivor of them, with the consent in writing of the said A. B. and C. D. or the survivor of them, and after the decease of such survivor, then in the discretion and of the proper authority of them the said trustees or the survivor of them, his executors, administrators, or assigns, to sell and dispose of all or any part of the said sum of £—— 3 per cent. Consolidated Bank Annuities, and lay out and invest the produce in or upon any other of the government stock or funds of Great Britain, or of the East Indies, or upon real security in England, or in the East Indies, and from time to time to alter, vary, or

change the securities in or upon which the same produce shall from time to time be invested, either as occasion shall require, or as the said A. B. and C. D., or the survivor of them, and after the decease of the survivor of them, then as the trustees or trustee for the time being in their or his discretion shall think fit; and that the money arising from the sale of all or any part of the said sum of £—— 3 per cent. Consolidated Bank Annuities, and the stocks, funds, and securities in or upon which the same money or any part thereof shall from time to time be invested, and the dividends, interest, and annual produce thereof shall be held upon, under, and subject to the same or the like trusts, and for the same or the like ends, intents, and purposes, and under and subject to the same or the like powers, provisoes, declarations, and agreements, as are hereinbefore expressed and declared of and concerning the said sums of £—— 3 per cent. Consolidated Bank Annuities, and the dividends, interest, and annual produce thereof.

To invest trust-monies in the purchase of lands, with power to exchange, sell, and lease, and a clause for purchaser's indemnity.

LXXXVIII. And it is hereby further declared and agreed by and between the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, his executors and administrators, and he and they is and are hereby authorized and required, at any time or times during the joint lives of the said E. F. and G. H., his intended wife, upon the request or by the direction of both of them the said E. F. and G. H., his intended wife, to be testified by some writing under both their hands, and after the decease of one of them the said E. F. and G. H., then, upon the request or by the direction of the survivor of them, to be testified by some writing under his or her hand, to lay out or invest all or any part of the said trust monies, or the stocks, funds, or securities in or upon which the same shall from time to time be invested, or the produce thereof, and also the money which from time to time shall arise from the sale of any messuages, lands, tenements, and hereditaments, from time to time to be purchased or taken in exchange under this present provision, in the purchase of any freehold or copyhold lands, tenements, and hereditaments held in fee-simple, and situate in England or in the

principality of Wales, or of any leasehold messuages, lands, tenements, and hereditaments, situate in England or in the principality of Wales, and held for a term or terms of years, of which sixty years (*a*) at least shall at that time be to come and unexpired (*b*). And it is hereby further declared and agreed by and between the parties to these presents, that the messuages, lands, tenements, and hereditaments to be purchased from time to time as aforesaid, and also the messuages, lands, tenements, and hereditaments to be taken in exchange from time to time for the messuages, lands, tenements, and hereditaments to be purchased as aforesaid, or any of them, under this power, shall or may from time to time, during the life of the said E. F. and G. H., or the survivor of them, with the consent and approbation of the said E. F. and G. H., or the survivor of them, (to be testified by some writing or writings under his, her, or their hand or hands), be given by way or in the nature of exchange for or in lieu of any other such messuages, lands, tenements, and hereditaments, freehold, copyhold, or leasehold, to be held and situate as aforesaid, as, in the opinion of the said E. F. and G. H., his intended wife, or the survivor of them, shall be of equal value; and that the messuages, lands, tenements, and hereditaments to be purchased and taken in exchange from time to time as aforesaid, shall be held upon trust, that they the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, from time to time, when thereunto requested by the said E. F. and G. H., or the survivor of them, and with his, her, or their consent, to be testified by writing under his, her, or their hand or hands as aforesaid, and after the decease of the survivor of the said E. F. and G. H. his intended wife, then in the discretion and of the proper authority of them the said A. B. and C. D., and the

(*a*) "Or if the same shall be purchased for a residence of the said E. F. and G. H., or either of them, then —— years."

(*b*) "And also in the fitting up and furnishing of any unfinished house which shall be purchased for a residence for the said E. F. and G. H., or either of them."

survivor of them, his heirs, executors, or administrators, do and shall make sale and absolutely dispose of the said messuages, lands, tenements, and hereditaments to be purchased and taken in exchange from time to time as aforesaid, either by public sale or private contract, and in such manner, and at such time or times, and either in one lot or by parcels and in several lots, as shall be deemed most convenient, and at the best price or prices which at the time of such sale or sales can or may be had or gotten for the same messuages, lands, tenements, and hereditaments respectively, and unto such person or persons respectively as shall be willing to become the purchaser or purchasers thereof respectively; And that the money which from time to time shall arise or be produced by or from such sale or sales, and every of them, shall be held upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinbefore expressed, declared, and contained of and concerning the (*a*) said trust monies, stocks, funds, and securities; and that the rents and annual profits of the messuages, lands, tenements, and hereditaments to be purchased and taken in exchange from time to time as aforesaid, shall in the meantime, until the same messuages, lands, tenements, and hereditaments shall be sold, be held in trust for and be payable and paid to the person or persons respectively who for the time being would be entitled to the interest, income, and dividends of the said trust monies, stocks, funds, and securities, in case the same had not been invested in the purchase of messuages, lands, tenements, and hereditaments as aforesaid, and in the same manner, parts, shares, and proportions, as he, she, or they respectively would be entitled to the said interest, income, and dividends; And that the messuages, lands, tenements, and hereditaments to be purchased and taken in exchange as aforesaid under this present power, shall, when and as the same shall be purchased or taken in exchange, be considered, for all the purposes of this settlement,

(*a*) Or,—

"money &c. which shall be invested in the same purchase or purchases."

as money, and be subject in all respects to the same or the like trusts, powers, provisoes, and agreements, as the money to be laid out in the purchase of the said messuages, lands, tenements, and hereditaments to be purchased as aforesaid shall be subject to at the time when such purchase shall be made, anything hereinbefore contained to the contrary notwithstanding (*a*). And it is hereby declared and agreed by and between the parties to these presents, and for themselves respectively, and their respective heirs, executors, and administrators, they hereby severally direct and appoint, that the person or persons respectively who shall become the purchaser or purchasers of the said messuages, lands, tenements, and hereditaments, which from time to time shall be purchased and taken in exchange as aforesaid, his, her, or their heirs, executors, or administrators, shall not be obliged or required to see the application of the money to be advanced or paid by him, her, or them respectively, as the consideration of such purchase or purchases, or be answerable or accountable for the misapplication or nonapplication of the same money, or any part thereof, after the same shall have been paid to or to the order of the said A. B. and C. D., or the survivor of them, his heirs, executors, administrators, or assigns; and that all receipts which shall be given by the said A. B. and C. D., or the survivor of them, his heirs, executors, administrators, or assigns, for such purchase monies, or any part thereof, shall be good, valid, and sufficient acquittances and discharges for the sum or sums of money which therein or thereby respectively shall be acknowledged or expressed to be or to have been received; and that the person or persons respectively who shall take any messuages, lands, tenements, or hereditaments, by way or in the nature of exchange, under this present power, shall not be obliged to see the

(*a*) "Provided always, and during the lifetime of the said E. F., the said several powers hereinbefore contained relative to the partition, sale, and exchange of the said messuages, &c. shall not be exercised or exercisable as to the said sum of £——, or the stocks, &c. in or upon which &c., or the messuages, &c. to be purchased therewith, without the consent in writing of the said E. F."

messuages, lands, tenements, and hereditaments to be given by way or in the nature of exchange, settled or conveyed upon the trusts hereinbefore expressed and declared, or directed to be declared, of and concerning the same, or be answerable or accountable for any subsequent sale or disposition of the messuages, lands, tenements, and hereditaments to be given by way or in the nature of exchange as aforesaid, anything hereinbefore contained to the contrary thereof in any wise notwithstanding. And it is hereby further declared and agreed by and between the parties to these presents, that in the meantime, and from time to time, until the messuages, lands, tenements, and hereditaments to be purchased and taken in exchange from time to time as aforesaid shall be sold and converted into money, it shall or may be lawful to and for the said A. B. and C. D., or the survivor of them, his heirs, executors, or administrators, with the consent of (*a*) the said E. F. and G. H., and during their joint lives, and after the decease of (*b*) one of them, then with the consent of the survivor of them, and after the decease of both of them, then in the discretion and of the proper authority of them the said A. B. and C. D., or of the survivor of them, his heirs, executors, or administrators, to demise or lease all or any part of the said messuages, lands, tenements, and hereditaments respectively to be purchased and taken by way or in the nature of exchange, from time to time, under the powers hereinbefore contained, for any term or number of years, determinable before or at the end of twenty-one years from the time at which such lease or leases respectively shall be made or granted, so as upon every such lease the best or most improved rent which can be reasonably had or gotten shall be reserved, payable half-yearly or oftener, and so as the lessee or lessees shall enter into all usual covenants for payment of the said rents, and the management

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(*a*) Or,—

"the person or persons whose consent is hereby made necessary to such purchases and exchanges as aforesaid."

(*b*) Or,—

"all the same persons, then &c."

and cultivation of the premises, and so as there be contained in every such lease or demise a clause giving a right of re-entry when the said rent shall be behind or in arrear by the space of fourteen days after any one of the days to be appointed for the payment of the said rents respectively, and so as no lessee or lessees shall be made dispunishable for waste by any express words; and so as every such lease or demise shall be made by indenture or indentures, to be executed by the said A. B. and C. D., or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor; and so as every such lessee or lessees do and shall execute a counterpart of the indenture or indentures of lease or demise of the messuages, lands, tenements, and hereditaments to be granted or demised to him, her, or them respectively (*a*).

(*a*) "And further, that in making such purchases as aforesaid preference shall be given, if the said N. D. and M. S. his wife, R. G. and M. S. his wife, or the survivors or survivor of them shall so direct, to the purchase of all or any part of the estates situate in the county of N., late of the said R. T., which have been settled, or are intended and agreed to be settled as aforesaid, and which shall be offered or ready for sale under or by virtue of and pursuant to all or any of the powers contained in the settlement made or to be made thereof, and that in advancing money on mortgages preference shall be given, if the said N. D. and M. S. his wife, R. G. and M. S. his wife, or the survivors or survivor of them shall so direct, to a mortgage or mortgages of all or any part of the estates situate in the county of N., late of the said R. F., which have been settled, or are intended and agreed to be settled as aforesaid, and which shall be offered or ready to be mortgaged under or by virtue of and pursuant to all or any of the powers contained in the settlement made or to be made thereof; and further, that the said N. D. and M. S. his wife, and R. G. and M. S. his wife, and the survivors and survivor of them, shall be entitled and have a right to require that the power of sale hereinbefore contained shall be exercised for the purpose of raising money to be

To lay out trust monies in land. (Short form).

LXXXIX. Provided always, and it is hereby declared, that it shall be lawful for the said trustees and trustee, during the joint lives of the said A. B. and C. D., or the life of the survivor of them, with their, his, or her consent in writing, and after the decease of such survivor, at the discretion of the said trustees or trustee, to call in and convert into money all or any of the said trust-monies, stocks, funds, and securities, and to lay out the same or any part thereof in the purchase of any lands or hereditaments situate in England, either in fee-simple or held for a long term of not less than eighty years; and with such consent as aforesaid, and after the decease of the survivor of them the said A. B. and C. D., as and when the said trustees or trustee for the time being shall in their or his discretion think fit, re-sell the same lands or hereditaments, which shall in the meantime be considered as personal estate, and the rents and profits thereof to be applied accordingly, in the same manner as the interest for the said trust-monies would be applicable under the trusts aforesaid; and the money arising by such re-sale or

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applied in making such purchases, or taking a mortgage or mortgages of all or any part of the estates late of the said R. F., as far as any sales or mortgages shall then be in contemplation or ready to be made, and the money then held upon the trusts of this settlement will not extend to effect such purchase or mortgages; it being the true intent and meaning of the parties to these presents to preserve the estates late of the said R. F., and which have been or are to be settled as aforesaid, entire, as far as circumstances will admit; but the parts thereof to be purchased are to be settled to the uses of this settlement, and the money to be advanced on mortgage is to be subject to be repaid and invested in the purchase of other estates, to be settled according to the direction hereinbefore contained in that behalf; and that for all the purposes of the powers and provisions hereinbefore contained the said M. S. G. shall be and shall be deemed, taken, and considered to be well designated as a tenant for life of the said manor and hereditaments hereinbefore settled or expressed and intended so to be."

re-sales shall be invested upon such stocks, funds, and securities, which may be altered as hereinbefore is mentioned.

XC. Provided also, that it shall and may be lawful to and for the said trustees or trustee for the time being acting in the execution of these presents, from time to time, with the consent in writing of the said A. B. and C. D., or the survivor of them, during their, his, or her life, to lay out all or any part of the monies which shall be vested in them by virtue of these presents, in the purchase of freehold or copyhold messuages, lands, or tenements of inheritance situate in England or Wales; and also with such consent as aforesaid, to lay out any part of the said trust-monies, not exceeding in the whole the sum of £——, in the purchase of any leasehold estates in England or Wales; and again from time to time, with such consent as aforesaid, to sell and dispose of the said freehold, copyhold, or leasehold messuages, lands, tenements, and estates. And it is hereby agreed and declared, that the said messuages, lands, tenements, and estates so to be purchased as aforesaid, shall be considered as money or personal estate; and that the same, and the money to arise by sale thereof, shall be upon such and the same trusts as are hereinbefore declared or directed of or concerning the trust-monies which shall be so laid out or invested. Another form.

XCI. Provided always, and it is hereby agreed and declared, that it shall and may be lawful to and for the trustees or trustee for the time being of these presents, either to continue the trust-monies hereinbefore assigned in their respective present state of investment, or with the consent of the said A. B. and C. D., or the survivor of them, during their, his, or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, to call in, sell, transfer, or dispose of the same respectively, for such price or prices as they or he shall think fit; and it is hereby declared, that they or he do and shall lay out and invest the money to arise by or from any such sale or sales, in their or his names or name, in any English or foreign stocks or funds, or at interest upon government or real securities in England or To invest trust-monies in English or foreign stocks, or upon real securities, or in the purchase of land, and hold the same upon the original trusts; with powers to sell, assign, underlease, pull down, and rebuild premises, and to renew lease, and to raise money for carrying the powers into effect.

Wales, to be altered and varied as occasion shall require, or in the purchase of any freehold, leasehold, or copyhold hereditaments or premises, to be held respectively upon the same trusts as the funds from whence the monies laid out in such purchases were or would have been subject to if no such sales and purchases had been made, or as near thereto as the tenures of the properties and intervening circumstances will admit; and also with such consent or at such discretion as aforesaid, to sell, assign, or underlease the said leasehold premises hereinbefore assigned, or intended so to be, or to pull down, rebuild, or alter the same, or to renew the present or any future lease thereof; and for that purpose, to surrender the then existing lease thereof, and to raise money for every or any such renewal, pulling down, rebuilding, or altering, either by mortgage of the same leasehold premises, or by calling in or by sale of the sum of £—— Bank Annuities, and all or any other of the trust-monies or funds hereinbefore assigned by the said A. B., provided the same shall not be then in reversion or by way of future interest.

Another form.

XCII. Provided always, and it is hereby agreed and declared, by and between the parties to these presents, that it shall be lawful for the trustees or trustee for the time being of these presents, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, to be testified by some writing under their, his, or her hands or hand, and from and after the decease of the survivor of them, at the discretion of the trustees or trustee, to sell or assign, for any term not exceeding twelve years in possession and not in reversion, to underlease the said leasehold premises hereinbefore assigned, or expressed and intended so to be, or to pull down and rebuild or alter the same, or to renew the present or any future lease or leases thereof, or to obtain the insertion, in every or any of such existing or renewed lease or leases of the same, of the name of the said A. B. instead of the names of either of them the said E. F. and G. H.; and to raise money for every or any such renewal, insertion of name, pulling down, rebuilding, or alteration, either by mortgage of the same leasehold premises, or by calling in or

by sale of all or any of the trust-monies or funds hereinbefore assigned by the said C. D., or expressed and intended so to be; and also that it shall and may be lawful for the trustees or trustee for the time being of these presents, either to continue the trust-monies hereinbefore assigned in their respective or present state of investment, or with such consent or at such discretion as aforesaid to call in, sell, transfer, or dispose of the same respectively, for such price or prices as they or he shall think fit. And it is hereby declared, that they or he do and shall lay out and invest the money to arise by or from any sale or sales to be made under or by virtue of these presents, in their or his names or name, in any English or foreign stocks or funds, or at interest upon government or real securities in England or Wales, to be altered and varied as occasion shall require, or in the purchase of any freehold or copyhold hereditaments or premises, to be held respectively upon the same trusts as the funds from whence the monies laid out in such purchases were derived would have been subject to if no such sales or purchases had been made, or as near thereto as the tenures of the properties and intervening circumstances will admit.

XCIII. Provided also, and it is hereby agreed and declared, between and by the said parties to these presents (*a*), To lease at rack rent.

(*a*) 1. "Provided always, &c., and it shall and may be lawful to and for the said A. B. and C. D. respectively, during their respective lives, when they respectively shall be in possession of the said manors, messuages, &c., and after their deaths for all and every other person and persons who by virtue of these presents shall be entitled to the immediate freehold of the same premises, or any part thereof, or the guardian or guardians of such of them as shall be infants &c." Introductory clauses.

2. "Provided always, &c., and it shall and may be lawful to and for the said A. B., during the continuance of his estate, and after the determination thereof, to and for such other person or persons as for the time being, and from time to time, shall, under the limitations hereinbefore contained, be

that it shall and may be lawful to and for the said E. F. during his life, and after his decease to and for the said

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entitled to the possession or to the receipt of the rents of the said manors, messuages, &c."

3. "Provided always, &c., and it shall and may be lawful to and for the person or persons who for the time being shall be tenant or tenants for life in possession of or entitled to the receipt of the rents of all or any of the said lands and hereditaments, &c."

4. "Provided always, &c., and it shall and may be lawful to and for the said A. B. and C. D. respectively, as to all or any of the hereditaments limited to them respectively for their respective lives as aforesaid, and as and when they shall be in the actual possession or in the actual receipt of the rents thereof respectively; and as to &c., to and for &c."

5. "Provided always, &c., and it shall and may be lawful to and for the said A. B., as and when she shall be in possession or entitled to the receipt of the rents of the said manors, messuages, &c., under or by virtue of the estate hereby limited to her for her life, to and for the said A. B. during her life, &c."

6. "Provided always, &c., and it shall and may be lawful to and for the said A. B. during his life, and after his death to and for the guardian or guardians for the time being of the child, children, and issue respectively of the said intended marriage who for the time being shall be minors, as and when &c. of the said manors, messuages, &c. hereby limited to the use of the said A. B. for his life, with remainder over as aforesaid, &c."

7. "Provided always, &c., and it shall and may be lawful to and for the said trustees, or the survivor of them, his executors or administrators, during the life of the said E. F., with her consent, to be testified by some writing under her hand and seal, and after her decease, and within twenty-one years from her decease, to and for the person or persons respectively who for the time being shall, under the limitations hereinbefore, &c."

N. B.—The limitations were *in fee.*

I. K. and L. M., as and when and by virtue of the limitations hereinbefore contained, they respectively shall be for the

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8. "Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, during the joint lives of the said E. F. and G. H., with their consent, to be testified by some writing under their hands and seals, and during the life of the survivor of them, and as far only as relates to the part or share, parts or shares of such survivor, and with her consent in writing to be testified as aforesaid, and after the determination of the life estates of the said E. F. and G. H. respectively, to and for the person or persons who for the time being shall, under the limitations hereinbefore contained, be in the actual possession of or entitled to the receipt of the rents and profits of the messuages &c. hereby released or otherwise assured, or intended so to be, or any part thereof, during the continuance of his, her, and their respective estate and estates; and to and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, during the minority of any child or children or issue who by virtue of the limitations aforesaid shall for the time being be entitled to the possession or to the receipt of the rents of all or any part of the same messuages &c. under any estate of freehold or inheritance in all or any part of the said messuages &c., and as far only as relates to the part or share, parts or shares of the child, children, or other issue who for the time being shall be a minor or minors, by indenture or indentures, to be sealed and delivered by the person or persons respectively exercising such power, in the presence, &c."

As the circumstances to which this clause is applicable may not be sufficiently obvious to every one, it may be useful to observe, that it is introductory to a power of leasing in a settlement by a feme sole where the lands were settled in moieties;—as to one moiety, to the use of the settlor for her separate use for life, remainder to her children and issue as she should appoint, and with remainder to them *in tail*;—and as to the other moiety, to similar uses for the benefit of the settlor's sisters and

time being in the actual possession of or entitled to the rents, issues, and profits of the manors, messuages, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be; and also to and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, during the minority or respective minorities of any child or children of the said E. F. by the said G. H. his intended wife, who for the time being, by virtue of the limitations hereinbefore contained, shall be entitled to the actual possession or to the receipt of the rents, issues, and profits of the said manors, messuages, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, by any deed or deeds, writing or writings, to be sealed and delivered by him or them the said E. F. and J. K. and L. M. respectively, or the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor respectively, (as the case may require), in the presence of and to be attested by two or more credible witnesses, and either referring or not referring to this present power, to demise or lease all or any part or parts of the manors, messuages, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, to any person or persons, for any term or number of years absolute, not exceeding twenty-one years, to take effect in possession, and not in reversion or by way of future interest, so that there be reserved in every or any such demise or lease the best and most improved yearly rent or rents, to be payable during the continuance of the use or estate to be created thereby, and to be incident to the immediate rever-

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her issue. If the ultimate remainder be *in fee*, and not in tail, then the following clause should be inserted:—

"To and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, at any time or times *within twenty-one years from the decease of the survivor of &c.* [husband and wife]; And instead of "issue," the words "their heirs" ought to be used; omitting also the words, "under any estate of freehold or inheritance in all or any part of the said messuages" &c.

sion of the hereditaments so to be demised or leased that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift for the making thereof; and so that there be contained in every such demise or lease a clause, in the nature of a condition of re-entry, for nonpayment of the rent or rents thereby to be respectively reserved by the space of twenty-one days; and so that the person or persons named therein as lessee or lessees do execute a counterpart or counterparts thereof respectively, and do thereby covenant for due payment of the rent or rents thereby to be respectively reserved; and be not, by any clause or words therein to be respectively contained, made dispunishable for waste, or exempted from punishment for committing waste.

Another form. (Humphreys).

XCIV. Provided always, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said E. F. [*husband*], at any time or times after the said intended marriage during his life, and after his death to and for the said A. B. and C. D. [*trustees to preserve contingent remainders*], and the survivor of them, their and his heirs and assigns, from time to time, and at all times during the minority of any child or children of the said E. F., by the said G. H. his intended wife, who, by virtue of any of the limitations aforesaid, shall be entitled to any estate of inheritance in possession of or in the said messuages, lands, tithes, and other hereditaments herein comprised by any indenture or indentures to demise or lease all or any part or parts of the said manor, messuages, lands, tithes, and other hereditaments, (except the manor), to any person or persons for any term or terms not exceeding twenty-one years, to take effect in possession, and not in reversion; and so as there be reserved on every such demise or lease the best or most improved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be demised, that can be reasonably gotten for the same, without taking any fine, premium, or foregift, for the making thereof, and so as there be contained therein a condition for re-entry on nonpayment of the rent or rents, thereby to be respectively reserved, for the space of thirty days or more;

and so as the lessee or lessees do execute a counterpart thereof respectively, and do thereby covenant for the due payment of the rent or rents, thereby to be respectively reserved, and to keep and leave the demised buildings in repair, and to cultivate the demised lands in a proper and husband-like manner, and be not thereby exempted from punishment for committing waste.

Another form, with variations.

XCV. Provided also, and notwithstanding any of the powers or limitations hereinbefore contained, it is hereby agreed and declared by and between all the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. his wife, and their children and issue respectively, as and when by virtue of the limitations, or in exercise of the power hereinbefore contained, they severally, successively, and respectively (*a*), shall be in the actual possession of or entitled to the receipt of the rents and profits of the said messuages, lands, and other hereditaments hereby released or otherwise assured or intended so to be, or any part thereof during the continuance of their respective estates, and to and for the said E. F. and G. H. [*trustees*], and the survivor of them, and the heirs, executors, or administrators of such survivor from time to time, and at all times during the minority of any child or children or issue who, by virtue of any of the limitations aforesaid, shall for the time being be entitled to the possession or to the receipt of the rents of all or any part of the same premises under any estate of freehold or inheritance, in all or any part of the messuages, lands, and other hereditaments hereby released or otherwise assured or intended so to be (*b*), by indenture or indentures to be sealed and delivered by them respectively, in the presence of and attested by one, two, or more credible witness or witnesses, to limit and appoint (by way of demise or lease), all or

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(*a*) "Or their trustees on their behalf."

(*b*) "And as far only as relates to the part or share, parts or shares of the child or children who for the time being shall be a minor or minors."

any part or parts of the said messuages, &c., with the appurtenances (*a*), to any person or persons for any term or number of years (*b*), not exceeding twenty-one years, to take effect in possession and not in reversion, or by way of future interest (*c*), so as there shall be reserved on every such limitation or appointment, by way of demise or lease (*d*), the best

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(*a*) Or,—

" first obtaining a license for that purpose as far as relates to the said copyhold estates."

(*b*) Or,—

1. " absolutely to take effect in possession immediately, or within two years from the time of granting each lease respectively, and to be for a term not exceeding twenty-one years from the date of each lease respectively, so as there shall be reserved on every such appointment by way of demise or lease the best or most improved yearly rent or rents, to commence from the time the lease shall commence in possession, and to be incident &c."

2. " to determine at or before the end of twenty-one years from the date of such indenture or indentures respectively, to take effect within twenty-one years from the date of the same indenture or indentures respectively."

3. " so as no term to be limited or appointed by the said A. B. shall exceed twenty-one years, and so as no term to be limited or appointed by such trustee or trustees shall exceed eleven years."

(*c*) Or,—

" and also to grant any houses or buildings, and the ground or other appurtenances attached thereto, not exceeding —— acres to any house, on repairing or improving leases, or any scites of ground for building leases, with or without any ground to be attached thereto, not exceeding —— acres to any one house."

(*d*) Or,—

" for any term not exceeding twenty-one years," when the above addition is used.

or most improved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be limited or appointed, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, for making thereof; and so as there shall be contained in every such indenture of limitation or appointment, by way of demise or lease, a condition of re-entry for nonpayment of the rent or rents thereby to be respectively reserved by the space of twenty-one days after the same rents respectively shall become due and payable; and so as the person or persons respectively, to whom such limitations or appointments, by way of demise or lease, shall be respectively made, shall execute counterparts of the indenture or indentures to be made to him, her, or them respectively, and thereby covenant for the due payment of the rent or rents thereby respectively reserved; and so as the person or persons respectively, to whom any such limitation or appointment shall be made, his, her, or their executors, administrators, or assigns, shall not, by any clause or words to be contained in any such indenture or indentures, be made dispunishable for waste, or exempted from punishment for committing waste; and so as the said copyhold lands shall not be limited or appointed contrary to the custom of the manor of which the same are parcel, without a licence first obtained for that purpose, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

To lease at rack rent. (Short form).

XCVI. Provided always, that it shall and may be lawful to and for the said A. B. and C. D., by any deed or deeds to be executed by them respectively in the presence of and to be attested by two or more credible witnesses, to demise or lease the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part thereof, to any person or persons for any number of years not exceeding twenty-one years in possession at rack rent, the lessee or lessees executing counterparts of such leases, and thereby covenanting for the payment of the rent, and such lease containing a clause in the nature of a condition of re-entry on nonpayment thereof, for the space of twenty-one days.

XCVII. To the use of the said A. B. and his assigns, for and during the term of his natural life, without impeachment of waste; and with power to lease the said messuage, lands, and hereditaments, or any part of the same, for any term or number of years, reserving the best and most improved yearly rent or rents that can or may be obtained for the same, without taking any fine or premium for such lease or leases; and such rent or rents to be reserved payable yearly or oftener during the continuance of the same lease or leases; and from and after the death, &c.

Another form. (In a settlement immediately following the limitation of an estate for life).

XCVIII. Provided always, and notwithstanding all or any of the trusts hereinbefore expressed and declared, it shall and may be lawful to and for the said trustee or trustees for the time being, with the consent and approbation in writing of the person or persons who for the time being shall, under the trusts hereinbefore contained, be entitled to the rents and income of all or any of the said freehold messuages &c., if such person or persons shall be of full age; and if such person or persons shall be under the age of twenty-one years, then in the discretion of the same trustee or trustees, to make or grant any lease or leases of the said messuages &c., or any of them, for any term or number of years, determinable before or at the end of twenty-one years from the time of making or granting the same lease or leases; so as every such lease shall be made by indenture, and at the best rent which can be obtained without taking any fine, premium, or foregift for making or granting the same.

For trustees, having the legal estate, to lease with consent, for twenty-one years, at improved rents.

XCIX. Provided always, that notwithstanding the use or estate hereinbefore limited to the said A. B. and C. D., their heirs and assigns, upon trust as aforesaid, it shall be lawful for the said E. F., his heirs or assigns, by indenture or indentures under his or their hand and seal or hands and seals, (but as to the said copyhold hereditaments, with the proper licence and consent of the lord or lady of the manor of W.), to limit and appoint by way of demise or lease the freehold and copyhold hereditaments hereinbefore released and covenanted to be surrendered respectively, with their appurtenances, to any person or persons whomsoever, for any number

For trustees to lease freeholds and copyholds (with licence) at rack-rent.

of years in possession, not exceeding twenty-one years, at rack rent; such appointee or appointees, lessee or lessees, executing counterparts of such leases, and thereby covenanting for payment of the rent, and such leases containing a clause in the nature of a condition of re-entry on nonpayment thereof.

For trustees, with consent, to lease copyholds, the trustees having the legal estate. (To follow the common power of leasing).

C. And also that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and his heirs, with the consent in writing of the said E. F. and G. H. or the survivor of them, and after the decease of the survivor of them, and at any time within twenty-one years from his or her decease, and during the minority of any child or children, or their heirs, who shall be entitled by virtue of the limitations aforesaid, then in the discretion and of the proper authority of the said A. B. and C. D., or the survivor of them, or the heirs of such survivor, but with the consent in writing of such of the same children (if any) as shall have attained the age of twenty-one years, to make or grant any lease or leases of the said copyhold messuage &c. hereinbefore covenanted to be surrendered, or any part thereof, for such term or terms, and with such restrictions and other circumstances as are hereinbefore expressed with regard to the said freehold hereditaments, and so also as the said copyhold messuage &c., or any part thereof, shall not be demised contrary to the custom of the manor of which the same are holden, without a licence first obtained for that purpose.

To lease at rack-rent. (In wills).

CI. Provided always, and I hereby declare that it shall be lawful for the said A. B. during his life, and after his decease for every person hereby made tenant for life of my said manors, lands, and other hereditaments, as and when they respectively shall be for the time being in the actual possession or entitled to the receipt of the rents and profits of the said manors, lands, and other hereditaments hereinbefore devised, if of full age, and for the guardian or guardians for the time being of such of the persons hereinbefore made tenants for life and tenants in tail of such said manors, lands, and other hereditaments, as shall be so for the time being entitled as aforesaid, and shall be under age, by any

deed or deeds, to be by him or them sealed and delivered in the presence of and to be attested by two or more credible witnesses, and either referring or not referring to this present power, to limit or appoint, by way of lease or demise, all or any part or parts of the manors, lands, and other hereditaments hereinbefore devised or intended so to be, unto any person or persons, for any term or number of years absolute, not exceeding twenty-one, in possession, and not in reversion, at rack rent, without taking any fine or foregift, and so that there be therein respectively contained a condition or power of re-entry for nonpayment of the rent, and so that the lessees execute counterparts thereof respectively, and thereby covenant for the due payment of the rents, and be not thereby made dispunishable for waste.

To lease. (In wills—short form).

CII. I hereby will and direct, that all persons who by virtue of the limitations of this my will shall come into the possession of my real estate hereby devised, shall have power to lease the same or any part thereof, for any term not exceeding twenty-one years, so as the usual covenants be contained in such leases, and the full annual rent be reserved, and no fine taken for granting the same.

To grant building leases.

CIII. Provided always, and it is hereby agreed and declared, between and by the said parties to these presents, that it shall and may be lawful to and for the said E. F., during his life, and after his decease, to and for the said I. K. and L. M., as and when by virtue of the limitations hereinbefore contained they respectively shall be for the time being in the actual possession of or entitled to the rents, issues, and profits of the said manors, messuages, lands, and other hereditaments hereinbefore granted and released, or expressed or intended so to be; and to and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, during the minority or respective minorities of any child or children of them the said E. F. by the said G. H. his intended wife, who for the time being shall, by virtue of the limitations hereinbefore contained, be entitled to the actual possession or to the receipt of the rents, issues, and profits of the said manors, messuages,

lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, by any deed or deeds, writing or writings, to be sealed and delivered by him or them the said E. F. and I. K. and L. M. respectively; or the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor respectively, (as the case may be), in the presence of and to be attested by two or more credible witnesses, and either referring or not referring to this present power, to demise or lease all or any part of the lands and other hereditaments hereinbefore granted and released, or expressed and intended so to be, (except &c.), to any person or persons who shall improve the same, or covenant and agree to improve the same, by erecting and building thereon any new house or houses, erections, or buildings, or to rebuild or repair any of the messuages, tenements, erections, or buildings whatsoever, which now are or hereafter shall be on the same hereditaments, or any part thereof, or to expend such sum or sums of money in improvements thereof respectively as shall be thought adequate for the interests therein respectively to be departed with, for any term or number of years not exceeding ninety-nine years, to take effect in possession, and not in reversion or in the way of a future interest; so that in every such demise or lease there be reserved the best and most improved yearly rent or rents, to be payable during the continuance of the use or estate, uses or estates to be created thereby, and to be incident to the immediate reversion of the hereditaments so to be demised or leased, that can be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift for the making thereof; and so that there be contained, in every such demise or lease, a clause in the nature of a condition of re-entry on nonpayment of the rent thereby to be reserved, by the space of twenty-one days.

For successive tenants for life and for the trustees of will during the minorities of children of tenants

CIV. Provided also, and I do hereby declare my will and mind to be, that it shall and may be lawful to and for my said son A. B., during his life, and after his decease to and for all and every other persons hereby made tenants for life of the manors and other hereditaments hereby devised, as

and when, by virtue of the limitations contained in this my will, they respectively shall be for the time being in the actual possession of or entitled to the rents and profits of the said manors and other hereditaments hereby devised; and to and for the said C. D. and E. F., and the survivor of them, and the executors and administrators of such survivor, during the minority or respective minorities of any child or children of the said A. B., or any other person hereby made tenant for life, who for the time being shall, under the limitations contained in this my will, be entitled to the actual possession or to the receipts of the rents and profits of the manors and other hereditaments hereby devised, with the consent in writing of his, her, or their guardian or guardians respectively, by any deed or instrument or deeds or instruments in writing, to be sealed and delivered by my said son A. B., or such other person hereby made tenant for life, or the said C. D. and E. F., or the survivor of them, or the executors, administrators, or assigns of such survivor, as the case may require, in the presence of and attested by two or more credible witnesses, and either referring or not referring to this present power, to limit or appoint, by way of demise or lease, all or any part of the lands and other hereditaments hereby devised, to any person or persons who shall improve the same by erecting or building thereon any new hereditaments or houses, erections or buildings whatsoever, or repair any of the messuages, tenements, erections, or buildings whatsoever, which now are or hereafter shall be on the same hereditaments, or any part thereof respectively, as shall be thought adequate for the interests therein respectively to be departed with, for any term or number of years not exceeding ninety-nine years, to take effect in possession; so that in every such limitation or appointment by way of demise or lease, there be reserved the best and most improved rent or rents, to be payable during the continuance of the use or estate, or uses or estates to be created thereby, and to be incident to the immediate reversion of the hereditaments so to be limited and appointed by way of demise or lease as aforesaid, that can be reasonably had or gotten for the same, without taking any fine, premium, or foregift for

for life, with consent of their guardians to make building and repairing leases. (In wills).

the making thereof; and so that no such limitation or appointment, by way of demise or lease as aforesaid, shall be valid in law unless there be inserted therein a clause in the nature of a condition of re-entry on nonpayment of the rent.

To grant building and repairing leases, and leases of mines at most improved rents.

CV. Provided also, and it is hereby further agreed and declared, by and between the said parties, that it shall and may be lawful to and for the said A. B., as and when he shall be in the possession of the castle, manors, &c. hereinbefore leased or otherwise assured, or intended so to be, or any of them, or any part thereof, by virtue of the limitations thereof hereinbefore contained; and also to and for the guardian or guardians of any son or sons of the said A. B. by the said C. D. his intended wife, or by any after-taken wife, during the minority or respective minorities of any such son or sons respectively, as and when such son or sons shall be entitled to an estate of freehold or inheritance in possession of and in all or any part of the same castle, manors, &c., by any deed or deeds indented, and sealed by him, her, or them respectively, in the presence of two or more credible witnesses, to demise or let all or any part of the same premises (except all that the said capital messuage &c. hereinbefore mentioned to be situate &c.) to any person or persons for any number of years not exceeding —— years; and also to lease all or any of the houses, lands, and hereditaments situate in A. aforesaid, on building, improving, or repairing leases, for any term or number of years not exceeding —— years; and to lease the whole or any part or share of any mines opened or to be opened, and veins and seams of coal, ore, minerals, and fossils, and any ground deemed convenient to be leased, and all necessary and needful privileges, licenses, and authorities to be exercised in respect of such mines, for any term or number of years not exceeding —— years; every such lease to take effect in possession, and not in reversion, remainder, or expectancy, or by way of future interest; so as upon every such lease there be reserved and made payable, half-yearly or oftener, during the continuance thereof, to be incident to and go along with the reversion expectant thereon respectively, the best and most improved yearly rent or rents in money; and

as to mines and other property of that description, yearly rents either in money, profits, or produce, by way of toll-dish, or partly in money, and partly in rents and produce, that can be reasonably had or obtained for the same, according to the nature and circumstances of the case, without taking any sum or sums of money or other thing by way of fine or income for or in respect of any such leases; and so as the lessees respectively, their executors, administrators, or assigns, except the lessees of mines and the rights of mining, and except the lessees of building, repairing, and improving leases, as far as respects buildings, repairs, and improvements, be not made dispunishable of waste by any express words therein; and so as in every such lease there be contained a clause of re-entry on nonpayment of the rent or rents to be thereby respectively reserved for the space of twenty-one days after the same rent or any part thereof shall become due, and so as the respective lessees to whom such leases shall be made, do seal and deliver counterparts thereof respectively.

To lease mines.

CVI. Provided also, that it shall be lawful to and for the said E. F., during his life, and after his decease for the person who for the time being shall, by virtue of the limitations hereinbefore contained, be in the actual possession or entitled to the receipt of the rents, issues, and profits of the manors and other hereditaments hereinbefore released, if such person shall be of full age; but if such person shall be under age, then during his minority, for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, by deed sealed and delivered by them respectively in the presence of and attested by two or more credible witnesses, to give or appoint to any person or persons, for any term of years not exceeding thirty-one years, full power and free liberty to search for, open, dig, or work any mine or mines of tin, copper, iron, or coal, or any other metal or mineral, in or under the same manors or other hereditaments, or any part thereof respectively, together with all usual or necessary powers or authorities in that behalf; and also to appoint the same hereditaments, or any part or parts of the same, by way of lease or demise,

for any term or number of years not exceeding ninety-nine years, to any person or persons who shall covenant or agree to open, dig, or work any such mine or mines, and to give him or them usual or reasonable powers for enabling him or them to open, dig, or work the same; but so that upon every appointment to be made under the aforesaid powers or either of them, there be reserved the usual and accustomed or a reasonable dish-dole, part, or share, of all such tin, copper, iron, coal, metal, or mineral as shall be discovered, gotten, and raised by virtue thereof, or some yearly sum of money, or some other emolument which may be thought by the person exercising the said powers or authorities respectively a reasonable retribution for the same to the person for the time being entitled to the said manors and other hereditaments; and so that on every such appointment there be contained all usual covenants, clauses, provisoes, and agreements for the due searching for and working such mines, and for the payment and delivery of such reserved dish-dole, part or share, sum of money, and other emolument; and so as every person to whom any such appointment shall be made do execute a counterpart of the deed containing the same.

To lease mines. (Another form).

CVII. Provided always, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D. successively, at any time or times after the said intended marriage, as and when by virtue of the several limitations aforesaid and otherwise they shall respectively be in the actual possession of or entitled to the rents and profits of the castles, manors, messuages, lands, and other hereditaments hereby granted and conveyed, partly in possession and partly in reversion or remainder as aforesaid, during their respective lives, and also to and for the said E. F. and G. H., and the survivor of them, and his heirs or assigns, from time to time and at all times during the minority of any child of the said intended marriage, who by virtue of any of the limitations aforesaid shall for the time being be entitled to an estate of inheritance in possession of or in the same castles, manors, messuages, lands, and other hereditaments, or any of them, by indenture or indentures, to be by them

respectively sealed and delivered in the presence of and attested by two or more credible witnesses, to grant, demise, or lease all or any of the mines, veins, seams, measures, and strata of coal, iron, and other mines or minerals already opened, found, or discovered, or which shall or may at any time or times hereafter be opened, found, or discovered in, under, or upon any of the manors, messuages, lands, and other hereditaments hereby granted and conveyed, partly in possession and partly in remainder or reversion, as aforesaid, unto any person or persons, for any term or number of years not exceeding ninety-nine years, to take effect in possession, and not in reversion or by way of future interest, with full and free liberty, licence, power, and authority for the lessee or lessees to search, sink, drive, win, work, and make any colliery or collieries, mine or mines, pit or pits, shaft or shafts, trench or trenches, groove or grooves, and to drive drifts, watergates, or watercourses, and to erect engines, levels, aqueducts, or gins, and to use all other lawful ways and means, as well for the finding, discovering, winning, working, and getting of coal, iron, stone, and other mines or minerals from and out of the said mines, veins or strata, pits, shafts, trenches, or grooves, as for the erecting and carrying away water, foul air, or styth from, forth, and out of the same, and sufficient ground room, heap room, and pit room for laying, placing, and manufacturing the coals, iron, and other mines and minerals, earth and rubbish that shall from time to time proceed from, or be wrought, dug, or gotten out of the same; and also full and sufficient way and passage to and for the respective lessee or lessees, his or their agents, workmen, or servants, from time to time, during his or their term or terms, to take, lead, and carry away with horses, carts, wains, waggons, and other carriages, all the coal, iron, and other materials to be wrought or gotten in, from, or out of the said mines, veins and strata, pits, shafts, trenches, or groves so to be demised or leased, and to make and lay waggon ways, rail ways, branch or branches, bridge or bridges, or other coal way or coal ways, bye ways, or side ways, and other roads and ways for that purpose, and to amend and repair the same as occasion shall require; and also full and free liberty, license, power, and authority to

erect, build, and set up in any convenient place or places near any of the said mines, veins, or strata so to be demised or leased, all such furnaces, forges, mills, engines, machines, houses, hovels, lodges, sheds, or other buildings as shall from time to time be needful or deemed convenient for standing, laying, and placing workmen, work-houses, work gear, and utensils to be employed or used in or about the working or carrying on of the said mines, veins, or strata, or in the working or manufacturing thereof; and also to dig and get up stone, sods, peat, clay, or soil for making, building, and repairing such houses and other buildings, and to do whatever else shall be deemed needful and requisite in or about the trying for, winning, working, obtaining, getting, converting, and manufacturing the coals, iron, ore, and other minerals in, from, forth, or out of the said mines, veins, and strata, and for the manufacturing, leading, and carrying away the same; together with or without full liberty, license, and authority for every such lessee, his executors, administrators, or assigns, either upon terms to be stipulated or otherwise, to take down, remove, and carry away at the end of his term all or any of such engines, machinery, tackle, gear, and articles whatsoever as he or they shall have erected and placed in or upon the demised premises, or any part thereof; so as upon every such grant, demise, or lease there be respectively reserved and made payable during the term of years to be thereby respectively created, the best and most improved yearly rent or rents, royalty or royalties, tolls or other duties, either in money or produce, or partly in money or partly in produce, that can be reasonably had or gotten for the same, to be incident to the immediate reversion of the hereditaments so to be demised, without taking any fine, premium, or foregift for the making thereof; and so as there be contained in each of them a condition of re-entry for non-payment of the rent or rents, royalty or royalties, tolls or other duties thereby to be reserved or made payable; and so as the respective lessee or lessees do execute counterparts of all such demises or leases as shall be made to them respectively, and enter into such covenants and agreements for the working and managing of the said mines, veins, and strata as are in like cases usual, and for rendering and pay-

ing the rent or rents, royalty or royalties, tolls, or other duties thereby to be reserved.

To lease mines. (Another form).

CVIII. And also to and for the said A. B., from time to time, in like manner, to grant any lease or leases of the mines and veins of coal and other minerals and fossils opened or to be opened, or the right of opening or working mines and veins of coal and other minerals and fossils in and upon the said messuages, hereby &c., for any term or number of years not exceeding sixty years, at and under such reservations, rents, tolls, duties, royalties, covenants, conditions, and agreements, as the said A. B. in his discretion shall at any time and from time to time think fit, and with such privileges and easements to be exercised on the adjoining ground, and with such wayleaves or roads as the said A. B. shall think fit; so as an annual rent equal to —— shillings per acre for every acre, and in that proportion for every less quantity of ground than an acre of surface ground, which shall from time to time be kept open, used, or worked, for the purpose of carrying on the business of such mines, shall be reserved by the lease of every such mine, payable during the term thereby granted; and so as the same rent or rents, and all other rents, tolls, and duties, to be reserved as aforesaid, shall from time to time, during the term or terms to be granted by such last-mentioned lease or leases respectively, be reserved, payable yearly or oftener to the person or persons who for the time being shall be entitled to the freehold reversion or inheritance of the said messuages &c., or to the possession thereof, subject to such appointment or appointments by way of demise or lease; and so as every appointment by way of demise or lease shall contain a proviso or agreement for re-entry, and for defeating such lease or leases respectively, unless the rents, toll duties, and other payments to be thereby reserved or made payable, and all arrears thereof, shall be duly and regularly paid within twenty days after the same respectively shall become due, and demand shall be made thereof by the person or persons entitled to the same; or in case the said mines shall not be worked with effect, and in a given manner, and with a given number of men, to be specified in every such lease or leases

respectively, and at &c., not less than —— calendar months after the three first years thereof, and thenceforth during the continuance of every such lease or leases respectively; and so as such last-mentioned lessee or lessees do and shall execute counterparts of the indenture or indentures of lease to be granted to him or them respectively, and thereby covenant for the due payment and performance of the rent or rents, and other duties thereby reserved.

To lease mines. (Immediately following a power to lease farms, &c.)

CIX. And also, by any deed or deeds indented, to be by him or her duly executed in the presence of two or more credible witnesses, to demise, grant, lease, and to farm, let in possession, and not in reversion or remainder by way of future interest, unto any person or persons, for any term or number of years not exceeding ninety-nine years, all or any mine or mines, veins or seams of coal and culm, or any other mines or minerals, of what nature, kind, or sort soever the same may be, in, upon, or under the last hereinbefore mentioned messuages &c., and of such pieces or parcels of land, by way of ground room, heap room, and pit-room, and such way-leaves and liberties and powers as may be judged reasonable, convenient, and necessary towards digging for and working the same, as well for the laying down of such coal, culm, or other minerals, as for the erection of engines and making canals and waggon-ways, or other ways or devices whatsoever that may be thought necessary for working, landing, or carrying away such coal, culm, mine, or minerals, or any other coal, culm, mine, or minerals, from or under the said lands, or the lands of any person or persons, so as there be reserved upon every such demise, lease, and grant, the most improved rent or rents, reservations, tolls, or other duties (usual in demises, leases, or grants of a like nature) to be incident to the reversion of the said premises so to be demised, which can or may be reasonably had or gotten for such of the premises as shall be leased at the time of the making thereof, without any fine or other thing to be had or taken for the demising thereof; and so as in every such demise, lease, or grant, there be contained a condition of reentry on nonpayment of the rent or rents to be thereby reserved; and so as the lessees or grantees to whom such

demises or leases shall be made do execute counterparts of their respective leases, and do thereby covenant for the payment and performance of the rents, reservations, tolls, and other duties to be thereby reserved; and so also as such last-mentioned leases be made under such further and other stipulations, restrictions, and agreements, as are usually inserted and contained in leases of mines of coal or culm in the said county of G.

To lease mines. (In wills).

CX. And also, with such consent as aforesaid, by indenture, to demise and lease all and every or any of the mines, delfs, beds, veins, and seams of coal, cannel, lead, iron, copper, and other minerals, and the ores thereof respectively found and discovered, or which shall or may at any time or times hereafter be opened, found, or discovered in, under, or upon any part of my said last-mentioned estate, unto any person or persons, for any term or number of years not exceeding ninety-nine years, to take effect in possession and not in reversion, remainder, or expectancy, or by way of future interest, together with full and free liberty, licence, power, and authority to search for, take, use, and dispose of all such coal, cannel, lead, iron, copper, and other minerals, and the ores thereof respectively, as shall be found in the same mines, delfs, beds, veins, and seams, and to dig; sink, drive, and work, and make pits, grooves, shafts, drifts, trenches, sluices, and water-courses, and to erect any furnace or furnaces, fire engine or other engines, or other erections and things whatsoever, as well for the finding, discovering, winning, working, and procuring coal, cannel, lead, iron, copper, or other minerals, or the ores thereof respectively, out of the said mines, as for the avoiding and carrying away water, foul air, and stench from and out of the same; and also full and free liberty, licence, power, and authority to erect, build, and set up in any convenient place or places near any of the said mines and quarries so to be demised or leased, all such houses, hovels, lodges, sheds, and other buildings as shall from time to time be needful and convenient for the standing, laying, or placing of any workmen, horses, metals, or minerals to be employed or used or gotten in or about the working of the same mines or quarries re-

spectively, and to dig and get up stones, peat, clay, or spar, for erecting or building and repairing such houses and other buildings, and whatsoever else should be deemed needful or requisite in or about or for the winning, working, obtaining, getting, washing, cleansing, and melting of coals, cannel, and other minerals, and the ores thereof respectively from, forth, and out of the said mines, and for the manufacturing, taking, and carrying away the same; so as upon all such leases there be respectively reserved and made payable, during the continuance thereof, the best or most improved yearly rent or rents, tolls, duties, and revenues, that can be reasonably had or gotten for the same, without taking any fine or foregift, or any other matter or thing in the nature or in lieu of any fine or foregift, in respect of the making thereof; and so as in every such lease there be contained a clause of re-entry in case the rent and rents thereupon to be reserved be behind and unpaid by the space of thirty-one days; and so as the lessee and lessees to whom such lease or leases shall be made as aforesaid doth and do seal and deliver a counterpart or counterparts of such lease or leases.

To lease and grant copies of freehold and copyhold lands for life or lives, or years determinable upon life or lives.

CXI. Provided always, and it is hereby further declared and agreed by and between the said parties to these presents, that it shall and may be lawful to and for the said A. B., at any time or times hereafter during the term of his natural life, and also to and for the said C. D., E. F., and G. H. [*trustees*], and the survivors or survivor of them, or the executors or administrators of such survivor, from time to time after his decease, and during the minority of any such son or sons of the said marriage as shall, by virtue of the limitations aforesaid with respect to the said several estates of the said A. B., be entitled for the time being to the freehold and inheritance of such estates, to make leases, demises, and copyhold grants of all or any of the same several estates respectively, in manner hereinafter mentioned; (that is to say), as to such and so many of the same estates and premises as have been usually granted, leased, or demised by deed or deeds for lives or years determinable on deaths, to grant, lease, or demise the same, or any of them, by indenture or indentures, to be by him or them respectively sealed and de-

livered in the presence of and attested by two or more credible witnesses, unto any person or persons, for one, two, or three lives, or for any term or number of years determinable upon the death of one, two, or three person or persons in such lease respectively to be named, and to take effect either in possession, or otherwise in reversion, or by way of future interest; And as to such part or parts of the same estate and premises as hath or have been usually granted or demised by copy of court roll for lives or years determinable upon deaths, either to grant out again and demise the same by copy of court roll, according to the custom of the manor wherein such copyhold grants are used, or otherwise, by indenture or indentures, to be by him or them respectively sealed and delivered, executed and attested as aforesaid, and in order to convert the same into leasehold estates, unto any person or persons for one, two, or three lives, or for any term or number of years determinable upon the death of one, two, or three person or persons in such copyhold grants or leases respectively to be named, and take effect either in possession or reversion, or by way of future interest; so as upon, in, and by every such lease, demise, or copyhold grant respectively, there shall be reserved and made payable, during the continuance of the terms, estates, or interests thereby respectively to be granted, leased, or demised, the ancient and accustomed or greater rents, duties, heriots, and services, or otherwise what shall be equally or more beneficial to the rent, duties, heriots, and services, or else a rateable and due proportion of the same respectively where part only is or shall be so granted, leased, or demised, as at the time of the last granting, leasing, or demising the same premises respectively were reserved or made payable for the same, or for or in respect thereof, to be incident to and go along with the reversion or remainder of the said premises expectant thereon; and so as there shall not be subsisting upon any farm or tenement, or part or parcel of the premises so to be leased, granted, or demised for life or lives, or for years determinable upon deaths as aforesaid, at any one time together, both in possession and reversion, any larger estate or interest than what shall be determinable, and will of course end and determine on the deaths of

three persons at the most in being at one and the same time, exclusive of the customary estate of any widow of any such grantor therein; and so as in every such demise, lease, or grant which shall be made by deed there be made or contained a clause or condition of re-entry for nonpayment of the rent or rents thereby to be reserved or made payable, and so as no clause be contained in any of the said leases, demises, or grants, whereby any power or authority whatsoever shall be given to any person, or grantee or lessee, or lessees or grantees therein respectively to be named, or his executors, administrators, or assigns, to do or commit waste, or whereby they, either or any of them respectively may, or shall be dispunishable, or in any kind exempted from punishment for doing or committing waste, and so as the respective lessees to whom such leases shall be made by deed do execute counterparts of such leases.

For husband and wife as to certain lands, husband and wife, and sons, and guardians of infant tenant in tail as to other lands, to demise for three lives, or years determinable thereon; also to demise common, reserving mines, at one-tenth yearly value rent. And to demise mines twenty-one years, &c.

CXII. Provided always, and it is hereby agreed and declared to be the true intent and meaning of these presents, that it shall and may be lawful to and for the said A. B. and C. his wife, as to the said manor of ——, and other the manors, lands, and hereditaments in the said county of C. firstly hereinbefore limited in use to the said A. B. for his life; and also to and for the said A. B. and C. his wife, and D. B. their son, as to the manors, lands, and hereditaments in the said county secondly hereinbefore limited to the said A. B. for his life, and also to and for the guardian or guardians of any person or persons being tenant or tenants in tail, and a minor or minors during such minority, when respectively in possession of or entitled to the rents and profits of the same premises respectively, during his or her life, or for any greater estate, by virtue of the limitations hereinbefore contained, to demise, lease, or grant by indenture or indentures, sealed and delivered in the presence of and attested by two or more credible witnesses, to any person or persons for life or lives, or for any term or number of years in possession or reversion, or by way of future interest determinable on the death or deaths of one, two, or three person or persons in such indenture or indentures to be named, all such part or parts of the said manors, messuages, &c., as now is or are,

or hath or have been usually leased or demised for one life, or two or three lives, or for any term or number of years determinable on deaths, and also any of the common or waste ground, for the purpose of improving the same, (reserving, however, all mines and minerals, with the usual liberties of working the same); so as in every such lease so to be made for lives or years determinable on deaths as aforesaid, there be reserved and made payable, during the continuance of the terms, estates, and interests thereby to be granted, leased, or demised, as to the said hereditaments first hereinbefore limited in use to the said A. B. for his life as aforesaid, not less than one-tenth of the improved yearly value of the premises so to be demised by way of rent; and as to the other hereditaments hereinbefore conveyed and settled, the usual or as good duties, heriots, and services, as at the time or times of the last setting, leasing, or demising of the same premises respectively was or were reserved; and so as there shall not be subsisting upon any farm, tenement, or part or parcel of the premises so to be leased, granted, or demised for one life, or for two or three lives, or for years determinable on deaths as aforesaid, at any one time together, both in possession and reversion, any greater estate or interest than what will determine on the deaths of three persons in being; And also to demise, lease, and grant all such part and parts of the said manors and premises, now being or which hath or have been usually let at rack-rents, and also such other part or parts of the said manors and hereditaments as now are or late were in lease for any life or lives, or for years determinable on a life or lives, in case the same shall be permitted to run out, or shall be otherwise determined, and not be renewed to any person or persons for any term or number of years not exceeding twenty-one years, to take effect in possession, and for the best and most improved yearly rent or rents they respectively can get for the same; And likewise to demise, lease, and grant all or any of the mines, copper, lead, tin, or other mines and minerals now opened, or which may be opened, found, or discovered in the same premises respectively, unto any person or persons, for any term or number of years not exceeding twenty-one years, to take effect in possession, at and for the best and

most improved yearly rent or rents, farm or lord's duty that can be reasonably had or obtained, with the usual powers, liberties, and privileges for searching, getting, working, washing, and cleansing the said mines and minerals, and for drawing the same, or any other mines lying contiguous to the said premises; so as that no fine, premium, or foregift shall be taken for granting any such lease or leases so to be made for any term not exceeding twenty-one years; and so as in every of the said leases to be made in pursuance and by virtue of these presents there be contained a condition of re-entry for the nonpayment of the rent and rents thereby respectively to be reserved; and so as no clause be contained in any of the leases giving power to any lessee to commit waste, or exempt him, her, or them from punishment for committing the same, other than and except such waste as may be necessary and is usual in opening and working of mines, and so as the respective lessees shall execute counterparts of their respective leases.

To lease for lives or years under certain restrictions, and to give discharges &c. during the minority of any issue male who under the limitations shall for the time being be in actual possession, or entitled to the rents, &c.

CXIII. Provided also, and it is hereby agreed and declared between and by the said parties to these presents, that it shall and may be lawful to and for the said A. B. during his life, and to and for the said C. D. after the death of the said A. B. and henceforth during his life, and after the death of the survivor of them, to and for the said E. F. and G. H. [*trustees*], and the survivor of them, and the executors or administrators of such survivor, from time to time and at all times during the minority of any son or sons or issue male who by virtue of any of the limitations hereinbefore contained shall for the time being be in the actual possession or entitled to the rents, issues, and profits of the said manors, hereditaments, and premises hereby limited to the sons of the said C. D. in tail male as aforesaid, by indenture or indentures, or other instrument or instruments in writing, to be sealed and delivered by him or them respectively, in the presence of and attested by one, two, or more credible witness or witnesses, to limit and appoint, by way of demise, lease, or grant, such of the said hereditaments so hereby limited to the sons of the said C. D. in tail male as

aforesaid, as now is or are or at any time within the last —— years hath or have been leased, or granted, or held by copy of court roll, for one life, or for two or three lives, or for any number of years determinable on the death of one person, or of two or three persons, unto any person or persons whomsoever, for one life, or for two or three lives, or for any number of years determinable on the death of one person, or the deaths of two or three persons; so as upon every such lease there shall be reserved and made payable during the continuance thereof, yearly, half-yearly, or quarterly, and to be incident to the next remainder or reversion of and in the same premises, the ancient and accustomed yearly rent or rents, or as great a beneficial rent as now is, or at the last time of leasing or granting the same respectively was reserved for the same, or a greater, or a proportional part thereof, in case part only of the lands comprised in any lease shall be so directed, limited, or appointed, and also the usual and accustomed heriots and services (if any), or a greater or just proportion in value of such heriots and services where part only is or shall be leased or granted by virtue of this power, or an equivalent for the same by way of annual rent; and so as there be not in any part or parcel of such premises so to be demised or leased any greater estate or interest subsisting at any one time than will determine or to be determinable on the death of the survivor of three persons, all then in being; and so that there be contained in every such demise or lease, (except upon grants or demises by copy of court roll), a condition of re-entry for nonpayment of the rent or rents thereby to be respectively reserved; and so as that the lessee or lessees in every such lease shall and do execute a counterpart or counterparts thereof, and do thereby covenant for the due payment of the rent or rents to be thereby respectively reserved. Provided always, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said E. F. and G. H., or the survivor of them, or the executors or administrators or assigns of such survivor of them, shall be a good and effectual discharge to the grantees or lessees paying such fines for the monies therein expressed to be received, and that after the giving or signing of such

receipts the same grantees or lessees respectively shall not be obliged to see to the application thereof, or be in anywise answerable or accountable for any loss, misapplication, or nonapplication of such monies, or any part thereof; and that such fines shall be considered as or in the nature of the rents or annual income of the said manor and hereditaments so entailed as aforesaid.

To make leases at improved rents—to renew leases of settled property, and repair premises—to sell and purchase other lands to be settled to same uses. Trustees' receipts to be sufficient discharges.

CXIV. Provided always, and it is hereby declared and agreed, by and between the said parties hereto, that it shall and may be lawful to and for the said A. B. and C. D., their executors, administrators, or assigns, at any time or times after the said intended marriage shall be had and solemnized, by and with the consent and direction of the said E. F. during her life, and after her decease by and with the consent and direction of the said G. H. and I. K., or the survivor of them, testified by writing under their hands and seals respectively, to demise or lease all or any part of the said messuages &c. to any person or persons, and for such number of years, and at the best and most improved yearly rent or rents that can be reasonably had or gotten for the same, without taking any fine or premium in respect thereof, and upon such terms and conditions as they the said trustees, their executors, administrators, or assigns, shall think most advantageous for the said parties, or the best that can be reasonably had or obtained; And it is hereby further declared and agreed by and between the parties hereto, that they the said A. B. and C. D., their executors or administrators, shall from time to time, as there shall be occasion, renew the said lease from the mayor and commonalty and citizens of the city of London, and out of the rents and profits of the said trust premises pay the fine and fees of such renewal, and shall also repair the said premises with all needful and necessary reparations and amendments, and pay and discharge the bills for the same out of the said rents and profits; Provided also, and it is hereby further declared and agreed by and between the said parties hereto, that it shall and may be lawful to and for the said A. B. and C. D., their executors or administrators, (by and with the consent of the said E. F., G. H., and I. K., or the survivors or sur-

vivor of them, testified as aforesaid), to sell and absolutely dispose of all or any part of the said messuages, &c., either together or separately, and (with the like consent, testified as aforesaid) to lay out any of the money arising by the said sale or sales in the purchase or purchases of any other messuages, lands, or tenements, either freehold or leasehold, to be settled, conveyed, assigned, and assured to, for, and upon the same or the like uses, trusts, intents, and purposes as hereinbefore is mentioned, and under and subject to the same or the like powers, provisoes, and agreements as herein is expressed, or such and so many of the said uses and trusts as shall be then existing undetermined, and capable of taking effect, or as near the same as the nature of the case will permit; And in order to facilitate the said sale or sales, it is hereby likewise declared and agreed, by and between all the said parties hereto, that the receipt or receipts of the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, shall be good and effectual discharges to the purchaser or purchasers of the aforesaid messuages &c., or any part or parts thereof, and that after such receipt or receipts given, such purchaser or purchasers shall not be concerned to see to the application of his, her, or their purchase money, or be answerable or accountable for the misapplication or nonapplication thereof, or of any part thereof. And it is hereby also further declared and agreed, that in the meantime, and until any such purchase or purchases shall be made with the money arising by the said sale or sales, the said A. B. and C. D., their executors or administrators, shall or may invest the money arising by such sale or sales in the purchase of government funds, stocks, or securities, or upon mortgages or real securities at interest, (with such consent and approbation as aforesaid), and pay and apply the dividends, interest, and proceeds thereof to the person or persons who by virtue of the limitations aforesaid would be entitled to the rents and profits of the aforesaid messuages &c., if the same had not been sold or disposed of.

CXV. Provided always nevertheless, and it is hereby agreed and declared between and by the said parties to

For trustees to renew lease, raise money for

the fines and expenses, and to surrender.

these presents, that the said C. D. and E. F., and the survivor of them, and the executors, administrators, and assigns of such survivor, shall and may from time to time, as well during the life of the said A. B. if he shall fail or neglect to renew the present or any renewed lease of the said leasehold premises, contrary to the covenant hereinbefore on his part for that purpose contained, as after the decease of the said A. B. during the continuance of the trusts hereinbefore expressed or declared of or concerning the leasehold premises, in case, when, and as often as any of the lives of the subsisting lease of the said leasehold premises for the time being shall happen to die, by and out of the rents and profits of the said leasehold premises, or by such other ways and means as they the said C. D. and E. F., or the survivor of them, or the executors, administrators, or assigns of such survivor shall think fit, raise such sum or sums of money as shall be sufficient to pay the fine for renewing the subsisting lease for the time being of the said leasehold premises, in the names or name of them or him, for the life or lives then in being, in such subsisting lease, and the life or lives of some other person or persons, and all costs, charges, and expenses relating thereto; And do and shall, if they or he can or may procure a renewal in their or his own names or name of the subsisting lease for the time being of the said leasehold premises, for the life or lives then in being in such subsisting lease, and the life or lives of some other person or persons, so that the leasehold premises may, so far as the nature and circumstances of the case will admit, be held by them the said C. D. and E. F., and the survivor of them, and the heirs and assigns of such survivor, by virtue of or under any such renewed lease, for the lives of three persons then in being, and the life of the longest liver of them, under and subject to such or the like rents, covenants, and agreements as are in and by the said indenture of the &c. reserved and contained; and do and shall pay the fine for every such renewed lease, and all costs, charges, and expenses relating thereto; and from time to time, for enabling the Chancellor of the Cathedral Church of St. Paul in London for the time being to make and execute any new or renewed lease as aforesaid, surrender to him the subsisting lease for the time

being of the said leasehold premises, and the premises therein comprised, and all the estate, right, title, and interest whatsoever of them the said C. D. and E. F., or the survivor of them, or the heirs or assigns of such survivor, of, in, or to the said leasehold premises (*a*).

For lessee to buy off certain portions of rent reserved in his lease(*b*).

CXVI. Provided always, and it is hereby declared and agreed by and between the said parties to these presents, that in case the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, shall, at any time or times during the first two years of the said term hereby granted, desire to purchase, buy off, or redeem the whole of the said yearly rents hereby respectively reserved, or any part or proportion thereof, not less on any one purchase than £—— per annum of the yearly rent firstly hereinbefore reserved, or £—— per annum of the yearly rent secondly hereinbefore reserved (except in the event of the yearly rent firstly hereby reserved being reduced within that sum by any previous purchase thereof), and of such his or their desire shall give the said E. F., G. H., and I. K., or the survivors or survivor of them, his executors, administrators, or assigns, at least three calendar months' previous notice in writing, (such notice to expire on one of the quarterly days of payment aforesaid, and within the first ten years of the said term), and shall pay unto the said E. F., G. H., and I. K., or the survivors or survivor of them, his executors, administrators, or assigns, the full sum of £——

(*a*) Add a declaration of trust of the renewed lease by reference to the trusts of former lease. Vide COMMON FORMS, Tit. VII. Art. 117, p. 319.

(*b*) This power was contained in an underlease granted under an agreement by the owner of the land and a builder, that the owner should lease the land to the builder at a pepper-corn rent, for the purpose of building a glass-house &c., and that as soon as the same was finished the builder should make an underlease to the owner and his copartner in trade at a rent of 7½ per cent. upon the money expended for the first ten years, and 15 per cent. for the remainder of the time; the underlessees to have the option of redeeming the rent so reserved, or certain parts thereof, upon payment of the money sunk, or certain parts thereof, within the first ten years.

of lawful money as aforesaid for and in respect of each and every sum of £—— firstly reserved rent, and £—— secondly reserved rent, to be so bought off or redeemed, as the price or consideration-money for the same, and so in proportion for and in respect of any greater or lesser or fractional sum, and shall also pay all arrears (if any) of the same rent then due, then and in that case the said yearly rents, or so much or such part thereof as shall have been so purchased or redeemed, that is to say, £—— of the firstly reserved rent, and £—— of the said secondly reserved rent for every £—— which shall be so paid, and in that proportion for any fractional part thereof, shall thenceforth cease and determine; and the said E. F., G. H., and I. K., their executors, administrators, or assigns, shall and will thereupon, at the request, costs, and expense of the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, make, do, and execute all lawful and reasonable acts, deeds, and assurances in the law whatsoever, in or concerning the premises, for discharging and releasing the said A. B. and C. D., and each of them, their and each of their heirs, executors, and administrators, and also the said premises hereby demised or otherwise assured, or intended so to be, of and from the said yearly rents, or so much or such part thereof as aforesaid, as the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, or his or their counsel in the law shall reasonably devise or advise and require; and also that in case any part of the said yearly rents shall be bought off or redeemed as aforesaid, within eighteen calendar months from the day of the date of these presents, the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall and will, upon the price or consideration to be by them actually received within the period last aforesaid, rebate or allow to the said A. B. and C. D., their executors or administrators, the sum of £5 upon every £100 of such price or consideration.

Of sale and exchange, with powers of revocation and new appointment, &c.

CXVII. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or admi-

nistrators of such survivor, at any time or times hereafter, at the joint request and by the joint direction of the said E. F. and G. H. during their joint lives, and after the decease of either of them, then at the request and by the direction of the survivor of them, testified by some writing, to be sealed and delivered by them, him, or her, in the presence of and to be attested by two or more credible witnesses, and after the decease of such survivor, then at the request and by the direction of the said I. K. and L. M. respectively, (testified as hereinbefore is mentioned), as and when by virtue of the limitations hereinbefore contained they shall severally be in the actual possession of or entitled to the rents, issues, and profits of the manors and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, to dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other manors, lands, and hereditaments to be situated in England or Wales, all or any part of the manors, lands, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such equivalent or recompence in manors, lands, or hereditaments, as to them the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, shall seem reasonable; and that for the purpose of effecting any such dispositions and conveyances, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, with such consent and approbation as aforesaid, by any deed or deeds, instrument or instruments in writing, to be by them or him sealed and delivered in the presence of and to be attested by two or more credible witnesses, absolutely to revoke and make void all and every or any of the uses, trusts, powers, and provisions hereinbefore limited, expressed, and declared of or concerning the same manors and other hereditaments, or any part or parts thereof; and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, or appoint any use or uses, estate or estates, trust or trusts of the said manors and other hereditaments,

or any part or parts thereof, which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate any such sales, dispositions, or conveyances as aforesaid; and also that upon any such exchange as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, to give or receive any sum or sums of money by way of equality of exchange; and also that upon payment of the money arising by sale of the said manors and other hereditaments, or any part or parts thereof, or of any money to be received for equality of exchange as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, to sign and give receipts for such money; and that such receipts shall be sufficient discharges to the person or persons to whom the same shall be given for the money in such receipts respectively expressed or acknowledged to be received; and that such person or persons, his, her, or their executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of such money, or be obliged or concerned to see to the application thereof; And it is hereby also agreed and declared, that when all or any part or parts of the manors and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, shall be sold for a valuable consideration in money, or any money shall be received for equality of exchange as aforesaid, they the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, or assigns of such survivor, shall, with all convenient speed, pay and apply the money to be received by them or him upon such sale or sales, or for equality of exchange as aforesaid, in or towards the satisfaction and discharge of the incumbrances which shall then affect the manors and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, and lay out and invest the surplus (if any) of the money to arise by such sale or sales, or to be received for such equality of exchange as aforesaid, in the purchase of other manors, lands, or hereditaments in fee-simple in pos-

session, to be situated in England or Wales, of a clear and indefeasible estate of inheritance, or of copyhold and leasehold lands or tenements convenient to be held therewith, or with the manors and other hereditaments hereby limited in strict settlement; yet so as that during the joint lives of the said E. F. and G. H. such purchase be made with their joint consent; and after the decease of either of them, then with the consent of the survivor of them, testified by some writing to be sealed and delivered by them, him, or her, in the presence of and to be attested by two or more credible witnesses; and after the decease of such survivor, with the consent of the person or persons for the time being entitled under the limitations hereinbefore contained to the manors and other hereditaments hereby limited in strict settlement (testified as hereinbefore is mentioned), if such person or persons shall be of full age; but if such person or persons shall be under age, then, at the discretion and of the proper authority of the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor; and that they the said A. B. and C. D., or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, do and shall settle and assure, or cause to be settled and assured, as well the manors, lands, and hereditaments so to be purchased, as the manors, lands, and hereditaments to be vested in the said A. B. and C. D., or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, upon any such exchange as hereinbefore is mentioned, to such and the same uses, upon such and the same trusts, and to and for such and the same intents and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, agreements, and declarations as are in and by these presents limited, expressed, declared, and contained of or concerning the manors and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, or as near thereto as the deaths of parties and other intervening accidents will then admit of; And further, that until the money arising by such sale or sales, or to be received for equality of exchange as aforesaid, shall be disposed of in the manner hereinbefore mentioned, it shall and may be lawful to and

for the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, by and with such consent and approbation as lastly hereinbefore is mentioned and required, or at the discretion of such trustees or trustee for the time being, (as the case may require), to place out such sum or sums of money at interest, either in the parliamentary stocks or public funds of Great Britain, or on Government or real securities in England or Wales, in the names or name of such trustees or trustee for the time being, and to alter, vary, transfer, and dispose of the said stocks, funds, and securities, as occasion shall require. And it is hereby also agreed and declared between and by the said parties to these presents, that the interest, dividends, and annual produce arising from such stocks, funds, and securities shall go and be paid to such person or persons, and be applied to and for such uses, intents, and purposes, and in such manner as the rents, issues, and profits of the said manors, lands, and other hereditaments to be purchased therewith would go, or be payable or applicable, in case such purchase or purchases and settlement as aforesaid were then actually made: Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that if any lands or tenements to be purchased under the present power shall be held for any term or terms of years, the same shall not, for the effect or purpose of transmission, vest absolutely in the child of any person hereby made tenant for life, unless and until such child shall attain the age of twenty-one years, or depart this life under that age, leaving issue male of his body living at his decease or born in due time after, and proper provisions shall be inserted in such settlement or settlements accordingly.

Another form. (Humphreys).

CXVIII. Provided also, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., [*trustees to preserve, &c.*], and the survivor of them, their and his heirs and assigns, at any time or times after the said intended marriage during the life of the said E. F., at and by his request and direction in writing, to dispose of either by

way of absolute sale, or in exchange for or in lieu of other manors, messuages, lands, or hereditaments, to be situate somewhere in England or Wales, all or any part of the manor, messuages, lands, tithes, and other hereditaments hereby released or intended so to be, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such equivalent or recompence in other manors, messuages, lands, or hereditaments, as to them the said A. B. and C. D., or the survivor of them, their or his heirs or assigns, shall seem reasonable; and that for the purpose of effecting any such sale or exchange as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, their and his heirs and assigns, at such request and by such direction, and so testified as aforesaid, by any deed or deeds, writing or writing, sealed and delivered by them or him in the presence of two or more witnesses, absolutely to revoke the subsisting uses of the hereditaments which shall be so proposed to be sold or exchanged, (but subject and without prejudice to any lease or leases which shall have been made in pursuance of the power of leasing hereinbefore contained), and to declare such new or other use or uses or trusts and purposes of the same hereditaments as the person or persons purchasing or taking in exchange the same, shall order and direct; And also that upon any such exchange as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, their and his heirs and assigns, to give or take any money by way of equality of exchange, and to raise and charge any money to be so given for that purpose with interest, upon the hereditaments to be taken in exchange; And also that upon payment of the money to arise by sale of the said hereditaments or any part thereof, or of any money to be paid for equality of exchange, or any part thereof, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, their or his heirs or assigns, to sign and give a receipt or receipts in writing for the money for which the same shall be so sold, or so to be paid for equality of exchange as aforesaid, and that such receipts shall sufficiently acquit and discharge the person or persons paying the same respectively therefrom,

and from any loss, misapplication, or nonapplication thereof; And it is hereby also agreed and declared, that when all or any part or parcel of the manor, messuages, lands, tithes, and other hereditaments, hereby released, or intended so to be, shall be so sold for a valuable consideration in money, or any money shall be received for equality of exchange under the powers hereinbefore contained, they the said A. B. and C. D., or the survivor of them, their or his heirs or assigns, shall with all convenient speed lay out and invest the money to arise by such sale or sales, or to be paid for equality of exchange as aforesaid, in the purchase of other messuages, lands, or hereditaments in fee-simple in possession, to be situate somewhere in England or Wales, of a clear and indefeasible estate of inheritance, or of any copyhold or leasehold lands or tenements convenient, to be held therewith, or with the hereditaments hereby released, or some part thereof, but not exceeding one equal eighth part in value of the whole estates to be so purchased, yet so as that during the life of the said E. F., every such purchase be made with his consent in writing; And moreover that any messuages, lands, or other hereditaments, so to be purchased, or to be taken in exchange as aforesaid, shall be settled and assured to, upon, and for such and the same uses, trusts, intents, and purposes, and with and subject to such and the same powers and provisoes as are by and in these presents limited and contained of and concerning the manor, messuages, lands, tithes, and hereditaments, hereby released, or intended so to be, or as near thereto as the death of parties and other intervening circumstances will then admit; yet so as that no copyhold or leasehold property to be purchased and settled as aforesaid shall vest absolutely, or for the purpose of transmission, but only defeasibly in any person or persons entitled to an estate of inheritance in the freehold hereditaments herein comprised, unless and until he, she, or they shall attain the age of twenty-one years, or dying under that age shall leave lawful issue of his, her, or their body or respective bodies, living at his, her, or their decease or respective deceases, or (as to the issue of any son or sons) born in due time afterwards; and further, that until the money arising by such sale or sales, exchange or exchanges as aforesaid, shall be

invested in real estates as aforesaid, the said A. B. and C. D., and the survivor of them, their and his heirs, executors, administrators, or assigns, shall, with the consent in writing of the said E. F., if then living, but if he shall be then dead, at the discretion of the trustees or trustee for the time being, place out such sum or sums of money at interest, either in some of the parliamentary stocks or public funds of Great Britain, or upon real securities in England, in the name or names of such trustee or trustees for the time being, with power for the trustee or trustees for the time being to alter, vary, transfer, and dispose of the said stocks, funds, and securities as occasion shall require, and also to give complete acquittances and discharges in writing to any person or persons paying in, discharging, or purchasing any of the aforesaid trust monies, stocks, funds, or securities; and that the interest, dividends, and annual produce arising from such investment, stocks, funds, or securities, shall go and be paid to such person or persons, and applied for such intents and purposes, and in such manner as the rents, issues, and profits of the real estate to be purchased therewith would go or be payable or be applicable unto, in case such purchase or purchases and settlements as aforesaid were then actually made.

Another form of power of sale and exchange, with variations.

CXIX. Provided also, and it is hereby agreed and declared by and between the parties to these presents, that notwithstanding any of the uses, powers, and trusts hereinbefore limited, expressed, declared, and contained (*a*), or any estates or charges to be limited or created under and by virtue of the said powers, but subject nevertheless and without prejudice to the uses and estates which from time to time shall have been previously limited under and by virtue of, and pursuant to the power of leasing hereinbefore contained, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, at any time or times here-

(*a*) Or, when the power is confined to particular lands,—
"of and concerning the said —— called ——."

after, at the request and by the direction of (*a*) the said E. F. and G. H., his said intended wife (*b*), jointly during their joint lives, and after the decease of one of them, then at the request and by the direction of the survivor of them (*c*), testified by some writing, sealed and delivered by him, her, or

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(*a*) Or,—

1. "the person or persons who for the time being shall be in the possession of, or entitled to the receipt of the rents of the said messuages, &c., in case such person or persons shall be of the age of twenty-one years, and free from all disabilities except coverture, which is not to be deemed a disability; and in case of any such disability as aforesaid, then in the discretion and of the proper authority of the said trustee or trustees for the time being of this power, such consent to be testified, &c."

2. "of any person who under the uses hereinbefore limited shall for the time being be, and shall have been three years in possession, or in the receipt of the rents of all or the greater part in value of my manor &c. hereinbefore devised, and shall then have attained the age of twenty-five years, to be testified &c."

3. "of the person or persons who for the time being shall, by virtue of any of the limitations contained in this my will, be in the actual possession of, or entitled to the rents, issues, and profits of the other manors, and other hereditaments hereby devised, if such person &c."

(*b*) Or,—

"at the request and by the direction of such of them the said A. B., C. D., and G. H. his intended wife, as for the time being shall be living, and shall have an estate for life in possession or in remainder in such of the said messuages and hereditaments as shall be intended to be sold or exchanged, to be testified by some writing or writings, to be sealed and delivered by the person or persons respectively whose request and direction are hereby made necessary, in the presence of &c."

(*c*) Or,—

"the person or persons respectively whose consent is hereby made necessary."

them respectively, in the presence of and attested by two or more credible witnesses, either by way of absolute sale, or in exchange for, or in lieu of other lands and hereditaments, to be situate in some part of England, or in the principality of Wales (*a*), to sell or dispose of, or give in exchange (*b*) all or any part of (*c*) the freehold lands and hereditaments hereby settled and assured as aforesaid, and the inheritance thereof in fee simple, to any person or persons whomsoever (*d*), for such price or prices in money, or for such equivalent or recompence in lands and hereditaments (*e*), as to the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor (*f*) shall seem reasonable; and that for the purpose of effecting such sale, disposition (*g*), or exchange as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, at such request, and by such direction as aforesaid, to be testified as aforesaid, by any deed or deeds, instru-

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(*a*) Or,—

1. "by way of partition, by giving an undivided part of some of the said lands and hereditaments, in lieu of an undivided part of others of the same lands and hereditaments."

2. "or in lieu of any perpetual rent issuing out of the said manors and other hereditaments to be sold &c."

(*b*) Or,—

"by way of partition."

(*c*) Or, when the power is confined to particular lands,—

"the said —— called ——."

(*d*) Or,—

"and to enfranchise any copyhold lands lying within and held of any of the manors, &c., hereby &c."

(*e*) Or,—

"undivided parts of lands and hereditaments."

(*f*) Or,—

"the trustee or trustees for the time being of this power."

(*g*) Or,—

"enfranchisement"—"partition."

ment or instruments in writing, sealed and delivered by him or them in the presence of and attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes hereinbefore limited, declared, and expressed (*a*), and which under and by virtue of the said powers (except as aforesaid) shall be limited, declared, and expressed, of and concerning the hereditaments so proposed to be sold (*b*) and exchanged, or any part thereof (*c*); and by the same or any other deed or deeds, instrument or instruments in writing, sealed and delivered, and attested as aforesaid, to limit, declare, direct, or appoint any other use or uses, estate or estates, trust or trusts of the hereditaments, of which the uses shall be so revoked, which it shall be thought expedient to limit, declare, direct, or appoint, to effectuate such sale (*d*), exchange, or disposition as aforesaid (*e*); and also, that upon every or any such exchange (*f*) as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., or the survivor of them, or the executors or administrators of such sur-

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(*a*) Or,—

"which, by means of the powers hereinbefore contained, shall be limited, declared, and expressed."

(*b*) Or,—

"enfranchised,"—"or given upon or by way of partition."

(*c*) Or,—

"except leases to be made under and by virtue of and pursuant to the said power of leasing."

(*d*) Or,—

"enfranchisement,"—"or partition."

(*e*) Or, when subject to annuities,—

"and also to make any bargain and arrangement under which annuities subsisting at the time of such sales may be extinguished, or may be purchased or otherwise satisfied, or an indemnity established or created against such annuities, so nevertheless that no such bargain or arrangement shall be made in the lifetime of the said G. H. without her consent in writing."

(*f*) Or,—

"or partition."

vivor, to give or receive (*a*) any sum or sums of money by way of equality of exchange (*b*) (*c*), and to deduct the money so given for equality of exchange (*c*) out of any which shall be raiseable or have been raised under the powers herein contained, and in the meantime to charge the settled estates with the same money (*d*); and also that upon payment of the money to arise by sale of the said hereditaments, or any part thereof, or to be received for (*e*) equality of exchange (*c*), it shall and may be lawful to and for the (*f*) said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, to sign and give receipts for the money for which the said lands and hereditaments shall be so sold, or which shall be received for (*e*) equality of exchange (*c*) as aforesaid, and that to the person or persons paying such money, such receipts shall be sufficient discharges for the money which, by such receipts respectively, shall be acknowledged to be received; and that the person or persons paying the same respectively, and taking such receipts for the same respectively as aforesaid, shall not afterwards be answerable or accountable for the misapplication or nonapplication, or be in anywise obliged to see to the application of such money, or any part thereof respectively; And it is hereby also agreed and declared, that when all or

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(*a*) Or,—
"agree to give or pay."

(*b*) Or,—
"and if necessary, upon every such sale or exchange as aforesaid, to enter into any agreement for the apportionment of the rent or rents of any lands and hereditaments which shall be sold or given, or taken in exchange as aforesaid."

(*c*) Or,—
"partition."

(*d*) Or,—
"and to raise the same money by a demise or appointment, by way of mortgage of the settled estates or any of them, for any term or terms of years."

(*e*) Or,—
"enfranchisement."

(*f*) Or,—
"the trustee or trustees for the time being of this power."

any part of the freehold lands and hereditaments hereby made saleable as aforesaid, shall be so sold for a valuable consideration in money, or any money shall be received for (*a*) equality of exchange (*b*), under the powers hereinbefore contained, the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor (*c*), shall, with all convenient speed, pay and apply the money to arise by such sale or sales, or to be received for (*a*) such equality of exchange (*b*), in or towards satisfaction and discharge of the principal sums of money (if any) which (*d*) are or shall then be a charge upon or affect the said lands and hereditaments, including the money, if any, to be charged for money given for equality of exchange as aforesaid (*e*), and lay out and invest the surplus (if any) of such money, or in case there shall be no such incumbrances, then the whole thereof in the purchase of other hereditaments, in fee simple, in possession, or subject only to leases at improved rents, to be situate in England or Wales, of a clear and indefeasible estate of inheritance in fee simple, or in the purchase of lands of leasehold or copyhold tenure, convenient to be held with the hereditaments hereinbefore settled and remaining unsold, or, with the hereditaments, to be purchased or taken in exchange as aforesaid (*f*); yet so that

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(*a*) Or,—

"enfranchisement."

(*b*) Or,—

"partition."

(*c*) Or,—

"the trustee or trustees for the time being of this power."

(*d*) Or,—

"now and by this my will are, or under the powers herein contained shall have been, charged upon or affect the manors and other hereditaments hereby devised, or any of them."

(*e*) Or,—

"And to be raised for portions as aforesaid," if a power for that purpose has been previously introduced.

(*f*) Or,—

1. "so as such leasehold lands shall be held for sixty years at least, and the same, together with such copyhold lands, shall not exceed in value one-third part of the hereditaments to be purchased or taken in exchange as aforesaid."

during the joint lives of the said E. F. and G. H. his intended wife, such purchase or purchases respectively shall be made with the consent of both of them the said E. F. and G. H., testified by some writing or writings, sealed and delivered by them, and after the decease of one of them with the consent of the survivor of them, testified by some writing, sealed and delivered by him or her; and so that after the decease of the survivor of them the said E. F. and G. H., such purchase or purchases shall be made with the consent in writing of the person or persons who, under and by virtue of the limitations and powers hereinbefore contained, or any of them, would for the time being be in the actual possession of or entitled to the actual receipt of the rents and profits of the hereditaments so to be purchased or received in exchange (*a*) as aforesaid, in case the same were then actually purchased or received in exchange (*a*), pursuant to the powers hereinbefore contained, provided such person or persons should be of full age and competent understanding; but if such person or persons respectively shall be under age, or under any other disability, (except coverture, and coverture is not to be deemed a disability), then at the discretion and of the proper authority of the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor; And moreover, that the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, do and shall settle and assure, or cause to be settled and assured, the hereditaments to be purchased from

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2. "yet so that such purchase or purchases respectively shall be made with the consent of such of them the said E. F. and G. H. &c. as shall be then living and entitled to have an estate or estates for life therein respectively, testified &c.; and so that after the decease of such of them the said E. F. and G. H. &c. as were to have estates for life if living, such purchase, &c."

3. "yet so that such copyhold or leasehold lands shall not at any time exceed one-fifth part of my estate then in settlement."

(*a*) Or,—

"by way of partition."

time to time as aforesaid, and also the hereditaments which from time to time shall be received by way of exchange (*a*), as hereinbefore mentioned (*b*), to such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, and agreements, as by these presents are limited, expressed, declared, and contained, and by any exercise of the said powers shall be limited, expressed, declared, and contained, of and concerning such of the hereditaments hereby conveyed and settled as aforesaid, as shall be so sold or exchanged (*c*), or as near thereto as the nature and quality of the tenure of the lands so to be purchased or received by way of exchange, the deaths of parties, the change of interest, and other intervening circumstances will then admit; yet so that charges may not be increased or multiplied, and so and in such manner that the lands and hereditaments to be respectively purchased and taken in exchange (*a*) as aforesaid, may upon and after such settlement and assurance be held (*d*) by the person or persons respectively who, at that time, would, under the limitations and powers hereinbefore contained, or any exercise of the same powers, be entitled to the lands and hereditaments respectively, which shall produce the money to be invested in such purchase or purchases as aforesaid, or be given in exchange (*a*) for the lands and hereditaments respectively, which shall be taken in exchange (*a*) as aforesaid, in case the lands and hereditaments which shall be sold or which shall be given in exchange (*a*) as aforesaid, had not been

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(*a*) Or,—

"upon partition."

(*b*) Or,—

"to the use of the said G. H. if she shall be then living and shall join or concur in such sale or exchange, for her life; and subject to the estate for her life, if any such estate shall be limited to her."

(*c*) Or,—

"given in partition."

(*d*) Or,—

"subject nevertheless and without prejudice to the estate,

sold or given in exchange (*a*); yet so that the term or terms, estate or estates of any lessee or lessees to whom any estate or estates, use or uses shall have been previously limited, under or by virtue of the power of leasing hereinbefore contained, shall not be transferred to or affect the lands and hereditaments to be respectively purchased and taken in exchange (*a*) as aforesaid, or any of them; and yet so that if any of the lands so to be purchased shall be held by lease or leases for years, the same shall not vest absolutely in any person or persons to be tenant or tenants in tail under this settlement, or the powers hereinbefore contained, unless or until such person or persons respectively shall attain the age of twenty-one years; but as far as the rules of law and equity will admit, shall belong to the person or persons to whom the same, if lands of inheritance, and hereby settled as such, would in that event have belonged, descended, devolved, or remained; And it is hereby also declared and agreed, that if any of the lands to be purchased as aforesaid shall be held by lease or leases for lives or for years, proper provisions shall be inserted in the settlements to be made thereof as aforesaid, for renewing the same leases respectively from time to time, as occasion shall require; and that the fines, fees, and expences of such renewal or renewals shall from time to time be defrayed out of the rents and profits of the premises to be purchased as aforesaid, and of which such renewals are to be made respectively (*b*); And it is hereby also agreed and declared, that in the meantime and until the money to arise or be produced by or from the sale or sales of the hereditaments hereby made saleable, or to be

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if any, limited to the use of the said G. H. for her life as aforesaid."

(*a*) Or,—

" upon partition."

(*b*) Or,—

" by the payment of one-seventh part of such renewal fine in each succeeding year after renewal."

received for (*a*) or upon equality of exchange (*b*), as hereinbefore is expressed, shall be applied in manner hereinbefore directed, it shall and may be lawful to and for the (*c*) said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, by and with such consent and approbation as hereinbefore is mentioned, or in his or their discretion as the case may require, to place out such sum or sums of money in the purchase of a competent share or shares of the parliamentary stocks or public funds of Great Britain, or upon government or real securities in England or Wales, in the name or names of the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, and to alter, vary, and transfer the said stocks, funds, and securities, from time to time, as occasion shall require; and that the interest, dividends, and annual income arising from such stocks, funds, or securities, shall go and be paid (*d*) in manner, and to the persons, and for the intents and purposes, and in the shares and proportions, in, to, or for which the rents and profits of the hereditaments to be purchased therewith would go or be payable or applicable, in case such purchase or purchases and settlement thereof as aforesaid were then actually made.

To sell and exchange freeholds and copyholds. (Short form, where the trustees have the legal estate, and no power of

CXX. Provided also, and it is hereby agreed and declared, between and by the said parties to these presents, that the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, do and shall, and they and he are hereby required (subject to the appointment by

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(*a*) Or,—
"enfranchisement."

(*b*) Or,—
"upon partition."

(*c*) Or,—
"the said trustee or trustees for the time being of this power."

(*d*) Or,—
"to the said G. H. if living, during her life, and after her death."

way of lease, if any, which shall have been made in exercise of the power hereinbefore contained), upon the request in writing of the said E. F. for that purpose, to make sale of or to convey in exchange, for or in lieu of any other freehold or copyhold hereditaments, all or any of the freehold and copyhold hereditaments hereinbefore released and covenanted to be surrendered respectively, and the inheritance thereof respectively; and upon any such exchange to receive any money by way of equality of exchange; And it is hereby agreed, that the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, do and shall lay out, and they and he are hereby expressly required, upon such consent as aforesaid, to lay out and invest the money arising from such sale, or to be paid for equality of exchange as aforesaid, in their or his names or name, in the purchase of freehold or copyhold lands, tenements, or hereditaments; And it is hereby agreed and declared, that the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, shall stand seised of the lands, tenements, and hereditaments so to be purchased, and also the lands, tenements, and hereditaments so to be received upon any such exchange, upon the trusts and subject to the powers and provisoes of this present settlement, or such of them as shall be subsisting or capable of taking effect; And it is hereby also agreed, that until such purchase shall be made, the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, do and shall lay out and invest the money arising from such sale or sales or to be received for equality of exchange in their or his names or name, in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England, and with the consent in writing of the said E. F., during his life, and after his decease at their or his discretion, to alter, vary, and transpose the same, as to them or him shall seem reasonable, and pay the interest, dividends, and annual produce thereof to the persons who, if such purchases were made, would be entitled to the rents of the lands so to be purchased as aforesaid.

revocation is accordingly given).

To sell and exchange freehold, leasehold, and copyhold lands.

CXXI. Provided also, and it is hereby agreed and declared by and between the said parties hereto, that it shall and may be lawful to and for the said A. B., C. D., and E. F., and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor respectively, at any time or times, with the consent and approbation of the said G. H. (such consent to be testified by any writing or writings under his hand and seal, and to be attested by two or more credible witnesses), to make sale and dispose of, or convey in exchange for, and in lieu of other messuages or tenements, farms, lands, and hereditaments, to be situate in that part of Great Britain called England, or in the dominion of Wales, the said messuages or tenements, farms, lands, hereditaments, and premises hereinbefore granted and released, bargained, sold, and assigned, and covenanted to be surrendered respectively, or any of them, or any part or parts thereof, to any person or persons, and his, her, and their heirs and assigns respectively, either together or in parcels, for such price and prices in money, or for such equivalent in messuages or tenements, farms, lands, or hereditaments, as to them the said A. B., C. D., and E. F., or the survivors and survivor of them, or the heirs or assigns of such survivor shall seem meet; and upon payment of the money arising by sale of all or any part of the said messuages or tenements, farms, lands, hereditaments, and premises hereinbefore granted and released, bargained, sold, and assigned, and covenanted to be surrendered respectively, to the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns respectively, the receipt and receipts of them the said A. B., C. D., and E. F., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, shall from time to time be a good and sufficient discharge to such purchaser or purchasers for the purchase money, for which the same messuages or tenements, farms, lands, hereditaments, and premises respectively, or any of them, shall be sold, or for so much thereof as in such receipt or receipts shall be expressed or acknowledged to be received, and such purchaser or purchasers, and his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be obliged to

see to the application of the same respective purchase monies, or any part thereof, and shall not be answerable or accountable for any loss, misapplication, or nonapplication of the same, or any part thereof; and when all or any part of the said messuage or tenements, lands, hereditaments, and premises hereinbefore granted and released, bargained, sold, and assigned, and covenanted to be surrendered respectively, shall be sold for a valuable consideration in money, and any sale, conveyance, or exchange shall be made thereof and executed to any purchaser or purchasers, or other person or persons in virtue of these presents, and such receipt shall be given for the purchase money as aforesaid, and also when all or any part or parts of the same messuages or tenements, farms, lands, hereditaments, and premises, shall be disposed of or conveyed in exchange, for or in lieu of any other messuages or tenements, farms, lands, and hereditaments, and the fee-simple of such last-mentioned hereditaments shall be well vested in them the said A. B., C. D., and E. F., or the survivors or survivor of them, or his heirs, all and every person and persons to whom any sale, conveyance, and exchange of all or any part or parts of the hereditaments hereinbefore granted and released, bargained, sold, or assigned, or covenanted to be surrendered respectively as aforesaid, shall have been made, and the respective heirs and assigns of such person or persons, shall and may have, hold, and enjoy the hereditaments by them respectively purchased, or had in exchange, freed and absolutely discharged of and from all and every the uses, estates, trusts, limitations, powers, provisoes, declarations, and agreements hereinbefore limited, expressed, and declared of and concerning the same premises respectively; save and except, and subject only to any lease or leases which may have been made of the said premises in virtue of the power hereinbefore contained (*a*).

To lease, sell, and exchange, (the trustees

CXXII. Provided always, and it is hereby directed, declared, and agreed, by and between the parties to these presents, that with the consent and approbation in writing

(*a*) Add the clauses for investing the purchase monies in other purchases, &c. &c.

having the legal estate), and purchases not to be made without consent of husband and wife; and survivor of husband and wife to have estate for life in lands received in exchange; and money advanced to be a lien on lands.

of the said E. F., and G. H. his intended wife, during their joint lives, or of the survivor of them, during his or her life, and after the death of the survivor of them, then in the discretion and of the proper authority of the trustee or trustees for the time being of these presents, all or any part of the said messuage, lands, and hereditaments hereby released, or otherwise assured or intended so to be; and also all or any of the messuages, lands, and hereditaments to be purchased or received in exchange as hereinafter is mentioned, may be demised or leased by the trustee or trustees for the time being of these presents, for any term or number of years not exceeding twenty-one years from the time of making such lease or leases respectively, and at the best or most improved yearly rent which at the time of making such lease or leases, or entering into the contract for such lease or leases, can or may be reasonably obtained for the hereditaments to be so leased, or shall or may be absolutely sold for an estate in fee-simple for the best price or prices which can be obtained for the same; with full power and authority to and for the trustee or trustees for the time being to give discharges for such money, without any obligation by or on the part of the person or persons paying the same money to see the application of the same money, or be answerable or accountable for the misapplication or nonapplication thereof, or shall or may be granted or conveyed in fee-simple in exchange for other lands and hereditaments held for an estate in fee-simple, and being at the time of such exchange of equal or greater value, or with full power to receive and take, or give any sum or sums of money by way of equivalent for such exchange; and that the money to be received on such sale, or for equality of exchange, shall be forthwith laid out by the said trustee or trustees for the time being, in the purchase of other messuages, lands, and hereditaments held in fee-simple, and being either freehold or copyhold; and that the messuage, lands, and hereditaments to be so purchased or received in exchange, shall be settled upon the same trusts (*a*)

(*a*) Or,—

"and under and subject to the same powers, provisoes, and agreements."

as are hereby declared of the messuage, lands, and hereditaments hereby released or otherwise assured, or intended so to be, or as near thereto as may be, and the deaths of parties and other intervening circumstances will admit; and in the meantime the said money, or the residue thereof, after paying the incidental expenses, or any sum to be advanced as and for the equivalent of exchange, shall be laid out by the said trustee or trustees for the time being in his or their name or names, on government or real securities; and the dividends, interest, and income thereof shall be payable and paid to the person or persons who for the time being would have been entitled to the rents and profits of the messuage, lands, and hereditaments so to be sold or given in exchange in case the same had not been sold or given in exchange. Provided always, and no such purchase or investment shall be made during the life of the said I. K. and L. M., or of the survivor of them, without the consent in writing of the said I. K. and L. M., or the survivor of them; nor shall any such exchange be made during the continuance of the estate for the life of the said G. H., without the concurrence therein of the said G. H. or her assigns, so that the sale or exchange may be of the freehold and inheritance in possession; but in that case the said G. H. or her assigns shall be entitled to have an estate for life in the lands and hereditaments to be so purchased or received in exchange as aforesaid. And in case any money shall be advanced for equality of exchange, the same money, till repaid, shall be a lien or charge on the lands and hereditaments which shall be received or taken in exchange, any thing hereinbefore contained to the contrary notwithstanding.

Of sale and exchange. (In wills).

CXXIII. Provided always, and I do hereby declare my will and mind to be, that it shall and may be lawful to and for the said A. B., during his life, and after his decease to and for every other person hereby made tenant for life of my said manors, lands, and other hereditaments, as and when they respectively shall be for the time being in the actual possession or entitled to the receipt of the rents and profits of the manors, lands, and other hereditaments hereinbefore devised and bequeathed respectively, if of full age, and if

such person shall be under age, then with the consent in writing of his guardian or guardians, to dispose of all or any of the manors, lands, hereditaments, and premises hereinbefore devised and bequeathed respectively, either by way of absolute sale or of exchange, and to execute all such revocations, appointments, conveyances, and assurances as shall be requisite to effect such disposition. And I hereby declare, that my said trustees or trustee for the time being shall receive the money to be paid for any such sale, or to be received for equality of exchange, and lay out the same in the purchase of fee-simple lands, tenements, or hereditaments in England or Wales, or copyholds of inheritance convenient to be held therewith, or with the manors and other hereditaments hereinbefore devised and bequeathed respectively; and do and shall convey and settle the same, or cause the same to be conveyed and settled, subject to any security which they or he may think proper to make thereon, for any sum of money to be by them or him given for equality of exchange, to the uses, upon the trusts, and subject to the powers, provisoes, and declarations of this my will, so far as the same shall be subsisting or capable of taking effect. And I hereby declare, that until such purchases shall be made, my said trustees or trustee for the time being shall, with such consent as aforesaid, lay out the money arising from such sale or sales, or to be received for such equality of exchange, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England, and shall from time to time alter, vary, and transpose the same, as occasion shall require, and pay the interest, dividends, and annual produce thereof to the persons who, if such purchases were made, would be entitled to the rents of the lands and hereditaments so to be purchased.

To exchange lands for other lands in the same parish. (In wills).

CXXIV. Provided also, and it is my will, that notwithstanding any of the uses, powers, and trusts hereinbefore limited, expressed, declared, and contained, or any estates or charges to be limited or created under and by virtue of the said powers, but subject nevertheless and without prejudice to the uses and estates which from time to time shall

have been previously limited under and by virtue of, and pursuant to, the power of leasing hereinbefore contained, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, at any time or times hereafter, at the request and by the direction of the person or persons who for the time being, and from time to time, shall be in the possession or entitled to the receipt of the rents of my said devised estate; if such person or persons shall be of full age; and if such person or persons shall be an infant, then, of his, her, or their guardian or guardians, by any writing or writings, to be sealed and delivered by him, her, or them respectively in the presence of and to be attested by two or more credible witnesses, by way of exchange for or in lieu of other lands and hereditaments, to be situated in the said parish of A., to sell or dispose of all or any part of the freehold lands and hereditaments hereby devised and settled as aforesaid, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such equivalent or recompense, in lands and hereditaments so situated, as to them the said A. B. and C. D., or the survivor of them, his executors or administrators, shall seem reasonable; and that for the purpose of giving effect to such exchange as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., or the survivor of them, his executors or administrators, at such request and by such direction as aforesaid, to be testified as aforesaid by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him or them in the presence of and to be attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes hereinbefore limited, declared, and expressed, and which under and by virtue of the said powers (except as aforesaid) shall be limited, declared, and expressed of and concerning the hereditaments so proposed to be exchanged, or any part thereof; and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, or appoint any such new or other use or uses, estate or estates, trust or trusts of the same hereditaments, the uses of which shall be

so revoked, as it shall be thought expedient to limit, declare, direct, or appoint, for the purpose of giving effect to such exchange or disposition as aforesaid; and that the said A. B. and C. D., and the survivor of them, his executors or administrators, do and shall settle and assure, or cause to be settled and assured, the hereditaments which from time to time shall be received by way of exchange as hereinbefore mentioned, to such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, and agreements, as by these presents are limited, expressed, declared, and contained of and concerning such of the hereditaments hereby devised and settled as aforesaid, as shall be so exchanged, or as near thereto as may be, and the deaths of parties and other intervening circumstances will admit.

Of sale and exchange of furniture.

CXXV. Provided always, that it shall and may be lawful to and for the said trustees or trustee for the time being, with the consent of the said A. B. during his life, and after his decease with the consent of the said C. D., his intended wife, during her life, to exchange for others, or absolutely to sell and dispose of all or any part or parts of the said furniture, effects, and things lastly hereinbefore assigned, or expressed and intended so to be; and to employ the monies to arise by any such sale or sales as aforesaid in the purchase of any new or other furniture, effects, or things of a similar nature and description, to be held by the said trustees or trustee for the time being, together with those taken in exchange, upon the same trusts, and to and for the same intents and purposes as are hereinbefore declared of the furniture, effects, and things lastly hereinbefore assigned, or expressed and intended so to be.

For trustees to sell, exchange, and make partition in cases of undivided shares.

CXXVI. Provided always, and it is hereby declared and agreed by and between all and every the said parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D. [*trustees*], and the survivor of them, and the heirs of such survivor, at any time or times after the solemnization of the said intended marriage, with the con-

sent and approbation of the said E. F. and G. H., or the survivor of them, testified by any writing or writings under the hands and seals or hand and seal of the person or persons whose consent is hereby made requisite as aforesaid, and to be attested by two or more credible witnesses, to make sale and dispose of or to convey in exchange for or in lieu of other manors, lands, or hereditaments to be situate somewhere in that part of Great Britain called England, all or any part of the said manors and premises hereby directed, limited, and appointed, granted, and released respectively, or expressed and intended so to be, with the rights, members, and appurtenances thereof, to any person or persons whomsoever, for such price or prices in money, or for such other equivalent or recompence in manors, lands, and hereditaments, as to them the said A. B. and C. D., or the survivor of them, or the heirs of such survivor, shall seem reasonable; and upon payment of the monies to arise by sale of the said premises, or any part or parcel thereof, to give and sign receipts for the money for which the same shall be so sold, which receipts shall be sufficient discharges to any purchasers or purchaser for the purchase money for which the same shall be so sold, or for so much thereof as in such receipts shall be acknowledged or expressed to be received; and such purchaser or purchasers, his, her, or their heirs or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of such purchase money; and also to make or join in making a partition or division, either at one and the same time or at different times, with the person or persons seised of or entitled to or interested in all or any of the manors and hereditaments, one undivided fourth part or share whereof is hereby granted and released, or intended so to be; and for that purpose to make and enter into such contracts or agreements, and to execute such conveyances and assignments as should be thought necessary for accomplishing or making such partition effectual; and that when any of the said premises shall be sold for a valuable consideration in money, and such receipts shall be given for the purchase money as aforesaid, and also when any of the said premises shall be sold or disposed of, or conveyed in exchange for or

in lieu of any such other manors, lands, or hereditaments as aforesaid, and the fee-simple and inheritance of such last-mentioned manors, lands, and hereditaments shall be well vested in them the said A. B. and C. D., or the survivor of them, or his heirs, and also when any such partition shall be made, and the conveyances and assignments for rendering the same effectual shall be made, completed, and executed, all and every the hereditaments and premises so sold, disposed of, or conveyed, shall be and remain for ever thenceforth freed and absolutely discharged of and from all and every the uses, estates, trusts, declarations, provisoes, and agreements in and by these presents expressed, limited, declared, and contained, touching or concerning the same; and then and from thenceforth these presents, and the grant and release hereinbefore contained and hereby made as aforesaid, shall be and enure as to such and so much of the same premises as shall be so respectively sold, disposed of, or conveyed to the only use and behoof of such purchaser or purchasers, or of such other person or persons to whom the same shall be respectively sold, disposed of, or conveyed, and of his and their heirs and assigns respectively for ever; subject only to such leases as shall have been made thereof, or of any part thereof, pursuant to the powers hereinbefore contained. Provided nevertheless, and it is hereby also declared, that when all or any part or parcel of the said premises hereby made saleable as aforesaid shall be sold in pursuance of these presents, all and every the sum and sums of money which shall arise by such sale or sales shall, with all convenient speed, be laid out and disposed of by them the said A. B. and C. D., or by the survivor of them, or his heirs (with such consent as aforesaid), and be invested in the purchase of other manors, messuages, lands, or hereditaments in fee-simple in possession, to be situate somewhere in that part of Great Britain called England, of a clear and indefeasible estate of inheritance; and as well the manors, messuages, lands, or tenements so to be purchased, as all and every the manors, lands, or hereditaments which shall be so vested in the said A. B. and C. D., or the survivor of them, or his heirs, by way of or in exchange for or in lieu of all or any part of the same premises hereby

made saleable or exchangeable as aforesaid, or upon such partition as hereinbefore is mentioned, shall be settled and conveyed to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and under such and the same provisoes, powers, conditions, and agreements as are in and by these presents limited, expressed, declared, and contained of and concerning the undivided fourth part or share of the several hereditaments and premises hereby granted and released, or as near thereto as the deaths of parties and other intervening circumstances will then admit of; And it is hereby declared, that in the meantime, and until the money arising by such sale or sales as aforesaid shall be invested in purchases or otherwise applied in the manner hereinbefore directed, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, by and with the consent and approbation of the said E. F. and G. H., or of the survivor of them, in case they or any of them shall be then living; and if they shall be then dead, then by and of the proper authority of the said trustee or trustees for the time being, to place out such sum or sums of money at interest, either in the parliamentary stocks or public funds, or in government or upon real securities, in the names or name of such trustees or trustee for the time being; and also that it shall and may be lawful to and for such trustees and trustee, their or his executors or administrators, from time to time, with such consent and approbation as aforesaid, or of their or his own proper authority, as the same shall happen, to call in the said principal money so placed out, and to place out the same again at interest, on such new or other stocks, funds, or securities of the like nature as they shall think proper; And it is hereby agreed and declared, that the interest, dividends, and annual produce arising from such stocks, funds, or securities, shall go and be paid from time to time to such person and persons, and be applied to and for such uses, intents, and purposes, and in such manner as the rents and profits of the said manors, lands, and hereditaments to be purchased therewith would go or be payable or applicable unto, in case such pur-

chase or purchases and settlement was or were then actually made.

For trustees to make partition.

CXXVII. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, at any time or times hereafter, at the request and by the direction of the said E. F. and G. H. his intended wife, during their joint lives; and after the decease of such of them who shall first depart this life, then at the request and by the direction of the survivor of them, during his or her life; and after the decease of such survivor, then at the request and by the direction of the person or persons who for the time being shall by virtue of any of the limitations hereinbefore contained be in the actual possession of or entitled to the receipt of the rents, issues, and profits of the said manor, messuages, lands, and other hereditaments hereby granted and released, or mentioned or intended so to be, if such person or persons respectively shall be of full age; but if under age, then during the minority or respective minorities of such person or persons respectively, at the request and by the direction of his, her, or their guardian or guardians, such request and direction to be testified by some writing or writings under the respective hands and seals of the person or persons whose request and direction for the time being is hereby made necessary, to join and concur with the person or persons for the time being seised of or entitled to the other part or parts, share or shares of the manor, messuages, lands, and other hereditaments hereinbefore mentioned, and the undivided moieties, or half parts or shares, or other parts or shares of which said premises are hereby granted and released, or expressed or intended so to be, in making a partition or division of the said manor, messuages, lands, and other hereditaments, or any part or parcel thereof; and that for the purpose of effectuating any such partition or division as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, at such request, and by such direction, and so

testified as last aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him, in the presence of and attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, and powers hereinbefore limited, expressed, or contained of and concerning the said moieties, parts or shares, hereditaments and premises hereinbefore mentioned, or any part thereof; and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, or appoint any use or uses, estate or estates, trust or trusts of the hereditaments, the uses of which shall be so revoked, which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate any such division or partition as aforesaid; and that upon any such division or partition as aforesaid, it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, to receive or take any sum or sums of money, by way of equality of partition as aforesaid.

(In articles for a settlement). For trustees to make partitions.

CXXVIII. And further, that notwithstanding any of the trusts and provisions hereinbefore contained, it shall or may be lawful to and for the said A. B. and C. D., or the survivor of them, or his heirs, with the consent and approbation of the said E. F. and G. H. his intended wife, or of the survivor of them, and after the death of the survivor of them (*a*), then in the discretion and of the proper authority of the said trustee or trustees for the time being, to consent to and concur in any arrangement for a partition of the real estate of the said I. K., devised by his will as aforesaid, and to accept any allotment or allotments thereof on such partition, in lieu of the share or shares thereof belonging to the said G. H., and hereby agreed to be settled; and that the lands and hereditaments which shall be received by the said A. B.

(*a*) Or,—

"And during the minority of all or any of the children of the said intended marriage."

and C. D., or the survivor of them, his heirs or assigns, on such partition, in lieu of the share or shares of the said G. H., hereby agreed to be settled, shall be held and be settled by him and them upon, under, and subject to the same or the like powers, provisoes, declarations, and agreements as are in these presents expressed and declared, or agreed to be declared, of the said share or shares of the said G. H., hereby settled or agreed to be settled as aforesaid, or as near thereto as may be, and the deaths of parties and other intervening circumstances will admit.

Of partition. (In wills).

CXXIX. Provided always, and it is also my will, and I do hereby direct and appoint, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, his heirs, executors, or administrators, with the consent and approbation, on the one part, of the said E. F. and G. his wife, or the survivor of them, and after the decease of the survivor of them, then of the person or persons who for the time being shall be entitled to the possession, or to the receipt of the rents of the first-mentioned moiety of my said manors &c.; or in case such person or persons shall be a minor or minors, then of his or their guardian or guardians; and on the other part, of the said I. K. and L. his wife, or the survivor of them, and after the decease of the survivor of them, then of the person or persons who for the time being shall be entitled to the possession or to the receipt of the rents of the second-mentioned moiety of my said manors &c., or in case such person or persons shall be a minor or minors, then of his or their guardian or guardians, such consent to be testified by some writing or writings under the hand of the person or persons whose consent is hereby made necessary, to make a partition or division into two equal parts of all or any of my said manors &c., devised and bequeathed to them the said A. B. and C. D., their heirs, executors, administrators, and assigns as aforesaid, and of the messuages, lands, and hereditaments (if any) which shall be received on any such exchange or exchanges as aforesaid, and to make, do, and execute all such acts, deeds, and assurances as shall be necessary to carry the same partition into effect; and do and shall settle and assure,

or cause to be settled and assured, the manors &c. which upon such partition shall be allotted in lieu of or as a compensation for such first-mentioned moiety or half part of the same manors &c., to and to the use of the said A. B. and C. D., or other trustee or trustees for the time being, and his or their heirs, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, and declarations as are by this my will expressed and declared of and concerning the said first-mentioned moiety or half part of my said manors &c., or as near thereto as may be, and the deaths of parties, the change of interests, and other intervening circumstances will admit; and do and shall settle and assure, or cause to be settled and assured, the manors, messuages, farms, lands, and hereditaments which upon such partition shall be allotted in lieu of or as a compensation for the second-mentioned moiety or half part of the same manors, messuages, lands, and hereditaments, to and to the use of the said A. B. and C. D., or such other trustee or trustees for the time being, and his or their heirs, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, and declarations as are by this my will mentioned, expressed, and declared of and concerning the said second-mentioned moiety or half part of my said manors &c., or as near thereto as may be, and the deaths of parties, the change of interests, and other intervening circumstances will admit.

For trustees to join in making partition of lands, and hold lands allotted upon the same trusts.

CXXX. Provided always, and notwithstanding any of the trusts hereinbefore contained, it shall or may be lawful to and for the said A. B. and C. D., and the survivor of them, his heirs and assigns, to join in any partition, or agreement for a partition of the said messuages &c. hereinbefore described, and to carry such agreement for partition into effect; and, for the purpose of making such partition, and for ascertaining the allotment to be given and taken on such partition, to consent to any mode of valuation, or reference to arbitration, in such manner, and on such terms, as the said A. B. and C. D., or the survivor of them, his heirs or assigns, shall deem reasonable; and that the messuages &c.,

which, upon such partition, shall be allotted to or for or taken by the said A. B. and C. D., or the survivor of them, his heirs or assigns, shall be held by him and them upon, under, and subject to the same or the like trusts, and for the same or the like ends, intents, and purposes as are hereinbefore expressed and declared of and concerning the said hereby or hereby intended to be released or otherwise assured moiety of the messuages &c. hereinbefore described; and that the expenses of and attending such partition and conveyances to be made for giving effect to and completing the same, shall be raised, defrayed, and reimbursed out of the trust estate and trust monies.

To enfranchise. [*From MS. collection of John Coles, Esq.*]

CXXXI. And further, that it shall and may be lawful to and for the said E. F. and G. H., and the survivor of them, and the heirs or assigns of such survivor, and they and he are and is hereby authorized and empowered and directed, by and with the consent and approbation of the said A. B. and C. D., or of the survivor of them, while they or either of them shall be living, such consent and approbation to be testified in writing under their hands, or the hand of the survivor of them, after either of them shall be dead, and after both of them the said A. B. and C. D. shall be dead, then of the proper authority of them the said E. F. and G. H., or the survivor of them, or the heirs or assigns of such survivor, from time to time, and at any time or times hereafter, upon payment of such sum or sums of money for the same as they the said E. F. and G. H., or the survivor of them, or the heirs or assigns of such survivor, shall think reasonable, by any deed or deeds, or instrument or instruments in writing, to be sealed and delivered by them or him in the presence of and to be attested by two or more credible witnesses, to make any enfranchisement or enfranchisements, and to grant, bargain, and sell unto and to the use of or in trust for any person or persons whomsoever, being copyhold or customary tenants, or holders of any copyhold or customary messuages, lands, tenements, or hereditaments, parcel or reputed parcel of the said manor of A., the freehold and inheritance of any messuages, lands, tenements, or hereditaments, by any such person or persons holden or reputed

to be holden by him, her, or them, for any copyhold or customary estate of inheritance, as part or parcel of the said manor, or holden or reputed to be holden of the said manor, or of, from, or under the lord or lords, or lady or ladies of the said manor, by any other customary tenure or holding whatsoever; so as the person or persons to or for the benefit of whom such enfranchisement or enfranchisements, grants, bargains, or sales shall be made respectively, and his, her, and their heirs and assigns, shall and may respectively hold and enjoy the said messuages, lands, tenements, and hereditaments which shall be so enfranchised, and the freehold and inheritance whereof shall be so granted, bargained, and sold as aforesaid, freed and discharged of and from all fines, and other payments by way of fines, for admittance, and also of and from all heriots, suits, customs, and customary services from thenceforth to grow due to the lord or lords or lady or ladies of the said manor, for or in respect of the said messuages, lands, tenements, or hereditaments which shall be so enfranchised, or the freehold and inheritance whereof shall be so granted, bargained, and sold as aforesaid.

To fell timber.

CXXXII. Provided always, and I do hereby declare my will and mind to be, that it shall and may be lawful to and for the said A. B. during his life, and after his decease to and for every other person hereby made tenant for life of my said manors, lands, and other hereditaments, as and when they respectively shall be for the time being in the actual possession of or entitled to the receipt of the rents and profits of the same, if of full age, and also for the guardian or guardians for the time being of such of the persons hereby made tenants for life or tenants in tail of my said manors, lands, and other hereditaments, as shall be so for the time being entitled as aforesaid, and shall be under age, from time to time, and at all proper times and seasons, to enter into and upon the said manors, lands, and other hereditaments hereinbefore devised, whereupon any timber trees are standing and growing, and to fell and cut down, or cause to be felled and cut down all and every such timber trees, pollards, and other trees as shall be at their full growth and height of improvement, or in a state of decay, or which

ought to be cut down for the improvement of other timber, and to sell and dispose of the same; And I declare, that the purchase monies thereof shall be payable and applicable to the person or persons, or for the purposes, to whom or for which the rents, issues, and profits of the said manors and other hereditaments shall be for the time being payable or applicable.

For trustees to fell timber when proper, and purchase with produce other lands to be settled to uses, and until sale to invest money in securities, and vary same; interest to be paid as rents of settled lands. (In wills).

CXXXIII. Provided also, and it is my will, and I hereby direct, that it shall and may be lawful to and for the trustees or trustee for the time being of this my will, until some person or persons, being a tenant in tail under or by virtue of the limitations herein contained, shall have attained the age of twenty-one years, to enter into and upon my said manor and other hereditaments whereupon any timber trees are or shall be standing and growing, and to fell and cut down, or cause to be felled and cut down, all and every or any such timber trees, pollards, and other trees as shall be at their full growth and height of improvement, or in a state of decay, or which ought to be cut down for the improvement of other timber trees, and to sell and dispose of the same to any person or persons willing to purchase the same for such price or prices as can be reasonably had or gotten for the same; And further, that my said trustees and trustee for the time being of this my will shall and do lay out and invest the money to arise and be produced by such sale as aforesaid, after deducting the incidental expenses, in the purchase of lands of inheritance, to be situate somewhere in that part of Great Britain called England, or of copyhold or leasehold estates convenient to be held therewith, or with the lands and hereditaments by this my will devised as aforesaid, and settle and assure, or cause or procure to be settled and assured, the lands and hereditaments to be so purchased, according to their several and respective natures and tenures, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, and declarations as are hereinbefore expressed, declared, and contained of and concerning my said manor and other hereditaments on which such timber respectively shall be felled, or as near thereto as the deaths of parties and other intervening circumstances will admit.

And it is my will, and I hereby also direct, that until the money to arise or be produced by such sale or sale as aforesaid shall be laid out in such purchase or purchases, it shall and may be lawful to and for the trustees or trustee for the time being of this my will to lay out and invest such sum or sums of money at interest, either in or upon some of the stocks or funds of Great Britain, or upon real securities in England, in their or his names or names, and to alter, vary, and transpose the said stocks, funds, and securities from time to time, as occasion shall require; And I also further direct that the interest, dividends, and annual income arising from such stocks, funds, and securities, shall go and be paid in manner, and to the persons, and for the intents and purposes, and in the parts, shares, and proportions, in, to, or for which the rents and annual income of the lands and hereditaments to be purchased with the produce of the same stocks, funds, and securities would go or be payable or applicable, in case such purchase or purchases and settlement thereof as aforesaid were then actually made. Provided always, and I direct that nothing hereinbefore contained respecting the right of felling timber shall extend or be construed to extend to preclude the right of having timber felled for the purpose of repairing buildings, gates, and fences of the devised estates, by or under the direction of the person or persons who, for the time being, shall be in the possession or entitled to the receipt of the rents and profits of the said trust estates respectively, or any part or parcel of the same, or during the minority of such person or persons, then of the trustee or trustees for the time being of this my will.

To charge settled estates with an adequate sum for defraying expenses of any suit relating thereto, and to create a term; with proviso for reduction of rent-charges in case of eviction.

CXXXIV. Provided also, and it is hereby further declared and agreed by and between the parties hereto, that notwithstanding any of the powers and limitations hereinbefore contained, it shall and may be lawful to and for the said A. B. the elder, and also to and for the said A. B. the younger, and also to and for each and every person hereby made tenant for his or her life, as and when the said tenant for life for the time being shall respectively be in the possession of or entitled to the receipt of the rents, issues, and

profits of the said manors, or reputed manors, messuages, farms, lands, tenements, and other hereditaments hereby released or otherwise assured, or intended so to be, or to be purchased as aforesaid, or any part or parts thereof, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him or her respectively sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her respective last will and testament in writing, or any codicil or codicils, to be by him or her signed and published in the presence of and attested by two or more credible witnesses, to subject and charge all or any part of the same hereditaments with such sum or sums of money as shall be sufficient to answer and defray the costs, charges, damages, and expenses (if any) which shall hereafter be actually paid, or be payable, by him or her, as between attorney or solicitor and client, in the defence of any suit or suits, action or actions, brought, sued, commenced, or prosecuted, or to be brought, sued, commenced, or prosecuted, for the purpose of substantiating any claim made, or to be made, to the same manors and hereditaments, or any of them; and for better and more effectually securing the payment of the same sum or sums of money, with interest for the same, to limit and appoint the same hereditaments, or any of them, or any part thereof, to or to the use of any trustee or trustees, or other person or persons, for any term or number of years, subject nevertheless to redemption on payment of the sum or sums of money to be charged as aforesaid, and the interest (if any) which shall become due thereon; and the certificate of such tenant for life of the amount of costs payable or paid by him shall be conclusive evidence to any purchaser or mortgagee of the amount, anything hereinbefore contained to the contrary notwithstanding. Provided always, and in case there should be an eviction of the said manors and hereditaments hereby released or otherwise assured, or intended so to be, or any of them, to the value of £—— a year or upwards, within twenty-one years from the day of the date of these presents, then and in that case, and when and so often as such eviction shall happen, and unless the contrary should be directed by the said A. B. the elder and A. B. the younger, during their joint lives,

the several annual rent-charges hereby created, and the rent-charges which may be created under any of the powers hereinbefore contained, and also the several sums in gross (except money for costs as aforesaid) which are or may be charged under or by virtue of these presents, either for portions or otherwise, and which shall not have been previously raised and paid, shall be reduced in amount in the same rate and proportion as the then annual value of the manors and hereditaments so evicted shall bear to the then annual value of all the manors and other hereditaments hereby settled and agreed to be settled, including those to be purchased; and the full, whole, and exclusive power of fixing and ascertaining such proportion shall be in the said C. D. and E. F., or the survivor of them, his executors or administrators, or other person or persons who for the time being shall be substituted as a trustee or trustees in his or their place or stead; and the determination of the trustee or trustees for the time being, declared by writing under his or their hand and seal, or hands and seals, and enrolled in the High Court of Chancery, shall, from and after such enrolment, be final, conclusive, and binding on all persons entitled to any benefit under these presents. Provided always, and the regulation hereby made respecting such eviction shall not prejudice, affect, or impeach any sale or sales, mortgage or mortgages, which shall have been previously made under or by virtue of all or any of the powers hereinbefore contained.

To appoint incumbent.

CXXXV. Provided also, and it is hereby agreed and declared, by and between the parties to these presents, that in case the churches of C. and S. mentioned and described in the third schedule to these presents, and hereby released or otherwise assured or intended so to be, or either of them, should not become vacant during the life of the said A. B. the elder, it shall and may be lawful to and for the same A. B., by his last will and testament in writing, or any codicil or codicils to be by him respectively signed and published in the presence of two or more credible witnesses, or by any deed to nominate and appoint any person or persons, who shall be related to him within the third degree, and who

shall be a clerk or clerks and duly qualified, or to be qualified, or consenting to qualify himself or themselves to be the incumbent or incumbents of the said churches of C. and S. respectively, in case neither of them should become vacant in his lifetime, or of such one of them as shall not become vacant during the life of the said A. B. the elder as aforesaid, as and when the same churches or either of them shall first become vacant after the decease of the same A. B.; and the said A. B. the elder shall or may exercise this power by an appointment of the next presentation to a trustee or trustees, or in any other manner he shall deem most eligible to accomplish the object of the same power.

To lend husband trust-monies upon the security of his bond.

CXXXVI. Provided always, and it is hereby agreed and declared between and by the said prrties to these presents, that it shall and may be lawful to and for the said E. F. and G. H., and the survivor of them, and the executors, administrators, and assigns of such survivor, and he and they are hereby authorized and required at the request of the said A. B., to advance and lend to him the said A. B. all or any part of the said trust monies, stocks, funds, and securities, upon the security of the bond of him the said A. B., payable on demand, and that they may call in the same at pleasure without any responsibility, by or on the behalf of them the said E. F. and G. H., or the survivor of them, or the executors, administrators, or assigns of such survivor, for any loss of the same trust monies, or any part thereof, which may happen by advancing the same to the said A. B.; but at the discretion of the said E. F. and G. H., or the survivor of them, or the executors, administrators, or assigns of such survivor, to withhold the loan of the said money from the said A. B., or not to enforce the payment thereof, either at law or in equity, against the will of the said A. B., as and when they shall think proper; and with an option to the said A. B. to pay in the said money from time to time, when he shall think fit, and to have the same advanced to him again on his request; And it is further agreed that the money which from time to time shall be advanced or lent to the said A. B., and the securities which shall be taken for the same money, shall be held upon the trusts, and for the in-

tents and purposes hereinbefore expressed or declared, and contained, for or concerning the said trust monies, stocks, funds, and securities.

To lend husband certain part of trust monies; provided he insure his life as a security.

CXXXVII. And it is hereby further agreed and declared, between and by the said parties to these presents, that it shall and may be lawful to and for the trustees and trustee for the time being of these presents, if they shall think proper so to do, to advance and lend unto the said A. B. any part of the trust monies, stocks, funds, and securities, in or upon which the said sum of £—— 3 per cent. Bank Annuities shall for the time being be invested, not exceeding in the whole the sum of £——: Provided nevertheless, that previous to any such advance or loan of the said trust monies or any part thereof, he the said A. B. do and shall, to the satisfaction of the said trustees or trustee, insure his life in some one of the said assurance offices, in the full amount of the money so to be advanced, for the purpose of securing the repayment thereof; and do and shall enter into such covenants with or give such security to the said trustees or trustee for the due payment of the said principal sum and interest so to be advanced, and of the premium and other costs, charges, and expenses of keeping the said policy or policies of assurance on foot, and for enabling them to receive all the benefit and advantage thereof, as to the said trustees or trustee shall seem meet.

To lend husband trust monies on the security of his bond and mortgage.

CXXXVIII. And it is hereby further provided, declared, and agreed, by and between the parties to these presents, that notwithstanding any of the trusts hereinbefore contained, it shall or may be lawful to or for the said E. F., at any time and from time to time during his natural life, to require all or any part of the said several sums of £——, £——, and £——, or all or any part of the produce of the stocks, funds, securities, and lands, on which the same shall from time to time be invested, to be advanced to him, so as he shall be ready to secure the sum or sums of money he shall require to be advanced to him from time to time, by his bond and a mortgage on real estate, not being houses, which shall be held either in fee-simple, or for a long and absolute term of years,

of which sixty years at least shall be at that time to come and unexpired; and so as the said real estates shall produce an annual income equal to the interest at £5 per centum per annum on the sum or sums of money to be advanced on the security thereof, and so as the said real estates shall be held for a good and clear title, and shall be worth at least one third more than the sum or sums required to be advanced on the security of the same, and so as interest at £5 per cent. per annum on the sum or sums to be advanced as aforesaid shall be secured by the bond and mortgage, or bonds and mortgages to be given for the payment of the same sum or sums respectively; And it is hereby further declared and agreed that the sum and sums of money which from time to time shall be lent or advanced to the said E. F., under the provision lastly hereinbefore contained, and the securities which shall be taken for the same money, shall be held upon the trusts, and for the ends, intents, and purposes, hereinbefore expressed, declared, and contained of and concerning the said several sums of £——, £——, and £——, and the stocks, funds, and securities upon which these sums are directed to be invested.

For trustees to advance husband trust-monies for his use in trade upon a bond.

CXXXIX. Provided always, and notwithstanding any of the trusts hereinbefore expressed, declared, and contained, of and concerning the said sum of £——, it is hereby expressly declared and agreed by and between the parties to these presents, and the said E. F. and G. H. do hereby severally direct and appoint, that from time to time, during so long time as the said E. F. shall continue in trade, it shall and may be lawful to and for the said A. B. and C. D. [*trustees*], and the survivor of them, his executors or administrators (*a*),

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(*a*) Or,—

"In his or their discretion to allow the said sum of £—— to remain in the hands of the said E. F., on the security of the said bond or writing obligatory, or, if the said A. B. and C. D., or the survivor of them, his executors or administrators, shall think fit and require with the further security of a warrant of attorney to enter up judgment upon

and he and they is and are hereby authorized, and also required upon the request of the said E. F., to advance and lend to the said E. F. all or any part of the said sum of £——, or of the produce of the stocks, funds, and securities upon which that sum shall from time to time be invested, upon the security of the bond of him the said E. F., payable on demand (*a*), without any responsibility by or on the part of them the said A. B. and C. D.; or the survivor of them, his executors or administrators, for any loss of the said trust monies, or any part thereof which may happen by advancing the same to the said E. F., and without any discretion in them the said A. B. and C. D., and the survivor of them, his executors or administrators, to withhold the loan of the said money from the said E. F., or to enforce the payment thereof (*b*), either at law or in equity, against the will of the said E. F., so long as he shall continue in trade, and with an option to the said E. F. to pay in the said money from time to time when he shall think fit, and to have the same again advanced to him on his request; and further that the money which from time to time shall be advanced or lent to the said E. F., and the securities which shall be taken for the same money, shall be held upon the trusts, and for the ends, intents, and purposes hereinbefore expressed, declared, and contained of and concerning the said sum of £——, and the stocks, funds, and securities upon which that sum is directed

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the said bond; (and which judgment shall or may be entered up accordingly in the discretion of the said A. B. and C. D., or the survivor of them, his executors or administrators), so long as the said A. B. and C. D., or the survivor of them, his executors or administrators, shall think fit, without any responsibility by or on the part of the said A. B. and C. D., or the survivor of them, his executors or administrators, for any loss of the said trust monies, or any part thereof, which may happen thereby, and with an option, &c."

(*a*) Or,—

"with interest for the same in the meantime, after the rate of £5 per cent. per annum."

(*b*) "during the life of the said E. F."

to be invested; but nothing hereinbefore contained shall affect or prejudice the right of the trustees or trustee for the time being to receive a dividend in respect of so much and such part (if any) of the said trust monies as shall be in the hands of the said E. F. when and if he shall become bankrupt or insolvent, and there shall be a distribution of the produce of his effects among his creditors (*a*).

Of revocation and new appointment over real property.

CXL. Provided always, and it is hereby expressly declared and agreed between and by all the said parties to these presents, that (*b*) it shall and may be lawful to and for the

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(*a*) Where the husband covenants to pay a sum of money to the trustees to the uses of the settlement, the following may be added:—

"And further, that if the said E. F. shall become bankrupt or insolvent at any time after the sum of £—— hereinafter covenanted to be paid by him to the trustees or trustee of this settlement shall have been paid accordingly, then and in that case the life interest of the said E. F. of and in the said sum of £——, or the stocks, funds, or securities in or upon which the same shall be invested, and also the contingent interest of the said E. F. in the principal of the same trust monies, stocks, funds, and securities, shall be a fund for answering and paying, and shall be charged and chargeable with the payment of the sum or sums of money which shall then be in the hands of the said E. F., on the security of his bond as aforesaid, or so much or such part thereof as shall not be received by the said trustees or trustee for the time being, on any such distribution of the effects of the said E. F. as aforesaid." Vide *Higginson* v. *Kelly*, 1 Ball. & B. 252, as an authority for this clause in principle.

(*b*) Or,—

"In case the said A. B. shall at any time hereafter, in lieu of the said manor &c. called A., settle, convey, and assure other lands and hereditaments situate in England, and of the clear yearly value of £——, and held in fee simple, to the same uses, upon the same trusts, and for the same ends, intents, and purposes, and under and subject &c. (except the present power) as are hereby limited, expressed, and de-

said A. B. and C. D., at any time or times hereafter, during their joint lives, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them both in the presence of and attested by two or more credible witnesses, to alter, vary, revoke, determine, and make void, either in part or in the whole, these presents, and the limitation and appointment, grant and release hereinbefore made by them, and all, every, or any of the uses, trusts, intents, purposes, powers, provisoes, limitations, declarations, and agreements hereinbefore limited, expressed, and declared of and concerning the manor, messuages, lands, and other hereditaments hereby limited and appointed, granted and released, or intended so to be; and by the same or any other deed or deeds, instrument or instruments in writing, to be so sealed, delivered, and attested as aforesaid, to direct, limit, and appoint (*a*), grant, and release the same, to the use of such other person or persons, for such other estate and estates, with such remainders over, upon such trusts, and for such intents and purposes, and charged and chargeable in such sort, manner, and form, and subject to, by, with, and under such powers, conditions, provisoes, limitations, declarations, and agreements, as the said A. B. and C. D. shall think proper, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (*b*).

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clared of and concerning the said manor called A., and either subject or without being subject to a prior estate for the life of the said C. D. [*the tenant for life under a prior settlement*], then and in that case, and at any time thereafter it shall &c."

(*a*) Or,—

"Any new and other use or uses, estate or estates, trust or trusts, power or powers of and concerning the same messuages &c., or so much or such part or parts thereof of or concerning which such revocation or alteration shall be made as aforesaid."

(*b*) "Provided further, and as far as the rules of law and equity will admit, and such restriction may be lawfully imposed without impeaching or invalidating the power of revo-

Of revocation and new appointment, to be exercised by husband and wife jointly, with consent of trustees, over a money fund.

CXLI. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that notwithstanding all or any of the trusts, powers, and provisions hereinbefore expressed and declared of and concerning the said sum of £——, and the stocks, funds, and securities in and upon which the same shall from time to time be invested, but subject nevertheless and without prejudice to the right of the said I. K. to receive the dividends, interest, and income thereof which shall become due during his lifetime, it shall or may be lawful to and for the said E. F. and G. his wife, jointly, at any time or times and from time to time during their joint lives, with the consent in writing of the said A. B. and C. D., or of the survivor of them, or the person or persons who for the time being shall be the trustee or trustees of the said sum of £——, and the stocks, funds, and securities in or upon which the same shall be invested, by any deed or deeds, writing or writings, to be sealed and delivered by them in the presence of two or more credible witnesses, and to be attested by the same witnesses, to alter, vary, revoke, annul, and determine all and every or any of the trusts, powers, and provisions hereinbefore expressed, declared, and contained of and concerning the said sum of £——, and the stocks, funds, and securities in and upon which the same shall be invested, and the dividends, interest, and income thereof; and by the same or any other deed or deeds, writing or writings, to be sealed and delivered and attested as aforesaid, and with such consent and approbation as aforesaid, and either with or without power of revocation,

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cation and new appointment hereinbefore contained, the said A. B. and C. D. do hereby direct and appoint that no revocation or new appointment to be made by them in exercise of the power of revocation and new appointment hereinbefore contained, shall be or be deemed available at law or in equity unless such persons hereinafter named, that is to say G. H. of &c., and I. K. of &c., if then living and in England, shall be a subscribing witness or witnesses to the execution of any such revocation and new appointment as one or two of such four witnesses as aforesaid."

to declare, direct, or appoint any new or other trust or trusts, powers, and provisions of and concerning all or any part of the said sum of £——, and the stocks, funds, and securities in and upon which the same shall be then invested, and the dividends, interest, and income thereof, in lieu or in stead of the trusts, powers, and provisions which shall be altered, varied, revoked, annulled, and determined as aforesaid.

To revoke uses of settlement on the settlement of other lands of a given value.

CXLII. Provided always, and it is hereby declared and agreed by and between the said parties to these presents, that if the said A. B. shall, at any time hereafter during his life and after the death of the said E. F. and G. his wife, or during the joint lives of the said E. F. and G. his wife, with their consent in writing, and after the death of one of them, with the consent in writing of the survivor of them, and after the death of the survivor of them, with the consent in writing of the said I. K. and L. M. [*releasees to uses*], or the survivor of them, or the trustee or trustees who, for the time being, shall be substituted in his or their place or stead, settle or cause to be settled any other freehold messuages, lands, tenements, or hereditaments situate in England, and held for an estate in fee simple in possession, or subject only to leases at rack or improved rents, which shall at that time be of the clear yearly value of £—— over and beyond land-tax and all other reprises, to the same or the like uses, and upon the same or the like trusts, and for the same or the like ends, intents, and purposes, and under and subject to the same or the like powers, provisoes, declarations, and agreements as are hereinbefore limited, expressed, and declared of and concerning the messuages, closes, lands, tenements, and hereditaments hereby released or otherwise assured, or intended so to be, or such and so many of the same uses, trusts, ends, intents, and purposes, powers, provisoes, declarations, and agreements, as shall be then existing undetermined and capable of taking effect, then and in that case it shall or may be lawful to and for the said A. B. in the lifetime of the said E. F. and G. his wife, with their joint consent in writing, and after the death of one of them, with the consent in writing of the survivor of them, and after the death of the survivor of them, then with the consent in

writing of the said I. K. and L. M., or the survivor of them, or the trustee or trustees who for the time being shall be substituted in his or their place or stead, and at any time or times, and from time to time, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of two or more credible witnesses, and to be attested by the same witnesses, to alter, revoke, and determine all or any of the uses, trusts, ends, intents, and purposes, powers, provisoes, limitations, declarations, and agreements hereinbefore limited, expressed, and declared of and concerning the messuages, closes, lands, tenements, and hereditaments hereby released or otherwise assured; and by the same or any other deed or deeds, instrument or instruments in writing, to be so sealed and delivered and attested as last mentioned, and with such consent in writing, as last hereinbefore is expressed, from time to time to direct, limit, and appoint all or any of the messuages, closes, lands, tenements, and hereditaments hereby released or otherwise assured, or intended so to be, to such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements, as the said A. B. shall think fit to limit, express, and declare of and concerning the same, either for the benefit of the said A. B., his heirs or assigns, or of any other person or persons whomsoever, anything hereinbefore or hereinafter contained to the contrary in anywise notwithstanding.

For husband to take a given quantity of land out of settlement, and to revoke uses, and to appoint same by deed or will.

CXLIII. Provided always, and it is hereby further agreed and declared by and between all the said parties to these presents, as far as they respectively are interested, that it shall and may be lawful to and for the said A. B., at any time or times hereafter, during his life, with the consent and approbation in writing of the said E. F. and G. his wife, if they shall be both living, and after the death of one of them, then with the consent and approbation in writing of the survivor of them, and after the death of the survivor of the said E. F. and G. his wife, then in the discretion of the said A. B. alone, and as to, for, and concerning only and as far as relates to any part or parts not exceeding ten acres of ground, parcel of the closes &c. hereby released &c., and not then

occupied by buildings, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be signed and published by him in the presence of two or more credible witnesses, and to be attested by the same witnesses, to alter, vary, change, or revoke and determine all or any of the uses, trusts, powers, provisoes, declarations, charges, and agreements hereinbefore limited, expressed, and declared of and concerning such closes, lands, and hereditaments not exceeding ten acres; and by the same deed or deeds, instrument or instruments in writing, will or wills, codicil or codicils, or by any other deed or deeds, instrument or instruments in writing, to be sealed and delivered and attested as aforesaid, or by any other will or wills, codicil or codicils thereto, to be signed, published, and attested as aforesaid, to appoint any new or other use or uses, trust or trusts, ends, intents, and purposes of or concerning the closes, lands, and hereditaments, as to which the uses shall be so altered, varied, changed, revoked, or determined as last mentioned; and either for the benefit of the said A. B., his heirs or assigns, or of any other person or persons whom he or they shall direct, limit, or appoint, any thing hereinbefore or hereinafter contained to the contrary thereof in anywise notwithstanding.

Of revocation in an appointment.

CXLIV. Provided always, and it shall or may be lawful to and for the said E. F. and G. H. during their joint lives, and they hereby reserve to themselves full power and authority, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them in the presence of two or more credible witnesses, and to be attested by the same witnesses, to revoke all and singular or any of the trusts hereby declared for the benefit of all or any one or more of their daughters, begotten or to be begotten, so and in such manner that the property to which and as far as such revocation shall extend, may stand settled and limited in the same manner, and subject to the same power of appointment, as if these presents had not been made and exe-

cuted, any thing hereinbefore contained to the contrary notwithstanding.

Of revocation in an appointment of one-fourth part.

CXLV. Provided always, and notwithstanding all or any of the limitations or trusts hereinbefore expressed and declared of and concerning the said one-fourth part or other share of the said residue, but subject nevertheless and without prejudice to the right of the said A. B. to receive the dividends, interest, and income thereof, which shall become due during her life, it shall or may be lawful to and for the said A. B., at any time or times, and from time to time during her life, by any deed or deeds, writing or writings, to be sealed and delivered by her in the presence of two or more credible witnesses, and to be attested by the same witnesses, or in any other manner conformable to her said power, to alter, vary, revoke, annul, and determine all and every or any of the trusts, powers, and provisions hereinbefore expressed, declared, and contained of and concerning all or any part of the said one-fourth part or other share of the said residue, or the produce thereof, or the stocks, funds, and securities in and upon which the same shall be invested, and the dividends, interest, and income thereof, or any estate or interest therein, to the intent and so that the power of the said A. B. may revive and be restored, and may be exercisable anew, as far as such revocation or alteration shall extend.

Of revocation and new appointment. (In wills).

CXLVI. Provided always, and in the event that the said A. B. shall survive the said C. B. her husband, then and in that case it is my will that it shall or may be lawful to and for the said A. B., at any time or times after the decease of her said husband, by any deed or deeds, writing or writings, to be sealed and delivered by her in the presence of two credible witnesses, and to be attested by the same witnesses, to revoke all or any of the uses, trusts, powers, or provisions hereinbefore limited, expressed, and declared of and concerning the said capital messuage at M. aforesaid, and the out-houses, gardens, and pleasure-grounds belonging thereto, and those parts of the farm which shall be selected by her as aforesaid, or any part or parts thereof, or the

money arising from the sale of the same; and by the same or any other deed or deeds, instrument or instruments in writing, to be sealed and delivered by her, and attested as aforesaid, to limit, direct, or appoint the same capital messuage, out-houses, gardens, pleasure-grounds, and parts of the said farm with the appurtenances, and money, or any part or parts thereof, and as well the legal as the equitable estate of the said messuage and other hereditaments, to such person or persons, and for such ends, intents, and purposes as she shall think fit; And I further direct, that all money due on the security of the same messuage and other hereditaments at my death shall be paid and satisfied out of my personal estate and the money arising from the sale of the residue of the said farm, under the direction hereinafter contained, in exoneration of the said messuage and other hereditaments so devised for the benefit of the said A. B. as aforesaid.

For trustees to consult counsel as to the expediency of carrying powers into execution.

CXLVII. Provided always nevertheless, that when and so often as the said E. F. shall require the said A. B. and C. D., or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, to carry into execution the power of sale and exchange first hereinbefore contained, or the power lastly hereinbefore contained, then and in every such case it shall and may be lawful to and for the said trustees or trustee, if they or he shall think proper, to consult counsel in the law as to the propriety and expediency of any such measure; and they or he shall not be obliged to join or concur in carrying the same into execution, if such counsel think it unsafe or improper for them or him so to do.

To separate and appropriate a certain sum of money from a general fund before the time previously appointed for the appropriation, and upon such sum being raised, residue of trust-

CXLVIII. And it is hereby further declared and agreed by and between the parties to these presents, that with the consent in writing of the said A. B. on the one part, and of the said C. D. and E. his wife, or the survivor of them, on the other part, the said sum of £—— shall and may be raised and appropriated during the lifetime of the said A. B., to be held upon the trusts hereinbefore limited, expressed, and declared of and concerning the same sum of £——; subject nevertheless and without prejudice to the

void the uses, trusts, powers, and provisoes in and by these presents limited, expressed, and declared of or concerning

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gent remainders should transfer the estate limited to them for that purpose (which is a vested remainder), or any other estate actually vested in them, to the new trustees, who would be enabled to exercise the different powers of sale and exchange, &c. created by the settlement under the express direction contained in the deed, that every new trustee should have the same powers as the old trustee had. But it has become usual to consider it essential that the new trustees should have a seisin to serve the uses in the same manner as the old trustees had, although it does not always happen that the trustees of the powers are the persons seised to the uses; nor is it at all necessary that they should be. To raise this new seisin two deeds are necessary; by the first, the uses of the settlement must be revoked, and the estate applied to a stranger in fee, and the old trustees must join in conveying the estate to him, and then the stranger must reconvey (which he may do by indorsement) to the uses of the settlement, in the same manner as if the new trustee's name had been inserted therein. The power of revocation and new appointment is considered to be clearly implied by the declaration in the power; and supposing no such power to exist, yet the estates to preserve contingent remainders are effectually vested in the old and new trustees by the actual conveyance. This mode assumes that there is a seisin in the releasees to serve the uses, and that that seisin is transferable, for otherwise it would not be necessary to defeat the old uses, and raise a new seisin in the old and new trustees to serve them. If it ever should become necessary to decide the point, there is little doubt but that it will be determined,—

"1st, That the power only meant that the estates actually vested in the trustees shall be transferred to the old and new trustees, which may be done by one deed operating under the Statute of Uses;

"2ndly, That they may then exercise the powers created by the settlement; and consequently,

"3rdly, That there is no seisin in the trustees to transfer, and therefore the revocation and appointment is nugatory and of no effect.

"Of course these observations do not apply to a case where the fee-simple is vested in the trustees. In that case, clearly, one conveyance only is necessary. The old trustees may convey by lease and release to the new trustee, to the use of himself and the old trustees in fee upon the trusts.

"Admitting that the usual power of appointment requires the seisin (if there be any) in the old trustees to be vested in the new trustees, it will not be denied by the most strenuous supporters of this doctrine, that this ceremony is not necessary where the power expressly negatives that construction: the powers in the settlement, it is quite clear, may be executed by a person not having any seisin vested in him to serve the uses;

the said trust estates, monies, and premises, or any of them, or any part or parts thereof respectively; And by the same or any other writing or writings, sealed and delivered and attested as aforesaid, to limit, declare, direct, or appoint any use or uses, estate or estates, trust or trusts of the said trust estates, monies, and premises which it shall be thought necessary or expedient to limit, declare, direct, or appoint for the purpose of conveying and vesting such estates, monies, and premises to or in such new trustee or trustees, jointly or solely, as hereinbefore is mentioned; And it is hereby further agreed and declared between and by the said parties to these presents, that any such new trustee and trustees shall and may in all things act and assist in the management, carrying on, and execution of the trusts to which he or they shall be so appointed, in conjunction with the other then surviving or continuing trustee or trustees of the same trust estates, monies, and premises respectively, if there shall be any such continuing; if not, then by himself and themselves respectively, as fully and effectually, and with all the same power and powers, authority and authorities of consent, approbation, discretion, calling in, laying out and investing, giving and signing receipts, and effectual indemnifications and discharges to purchasers, mortgagees, and others, and all powers and authorities whatsoever, to all intents, effects, constructions, and purposes whatsoever, as if he or they had been originally in and by these presents nominated and appointed a trustee or trustees for the purposes for which a new trustee or trustees respectively shall be appointed trustee or

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therefore, to prevent the necessity of this artificial, circuitous mode of appointing new trustees, it might be advisable to expressly declare in the deed creating the power, that upon the appointment of any new trustee the estate of the trustees to preserve contingent remainders shall be conveyed to the continuing and new trustees; and that every new trustee may act in the execution of the powers, *without being invested with the seisin* (if any) in the old trustees to serve the contingent or future uses. The usual power of revocation and new appointment introduced into this power of appointing new trustees is, however, to be preferred, *as its operation is now generally known; a circumstance which is, in practice, of infinitely greater importance than the expense of an additional deed.*"—Sugd. Pow. ii. 527—529.

trustees; and as the trustee or trustees, in and by these presents named, his or their heirs, executors, or administrators, in or to whose place such new trustee or trustees shall respectively come and succeed, is or are enabled to do, or could or might have done under and by virtue of these presents, if then living and continuing to act in the trusts hereby reposed in them or him, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. Provided also, and it is hereby further agreed and declared between and by the said parties to these presents, that the said several trustees hereby nominated and appointed, or to be nominated and appointed by virtue of the proviso hereinbefore contained, and each and every of them shall be charged and chargeable respectively only for such monies as he or they shall respectively actually receive by virtue of the trusts hereby in them reposed, notwithstanding his or their or any of their giving or signing, or joining in giving or signing any receipt or receipts for the sake of conformity, and any one or more of them shall not be answerable or accountable for the other or others of them, but each and every of them only for his and their own acts, receipts, neglects, or defaults respectively; and that he, they, or any of them shall not be answerable or accountable for any banker, broker, or other person with whom or in whose hands or custody any part of the said trust monies shall or may be deposited or lodged for safe custody, or otherwise in the execution of the trusts hereinbefore mentioned; and that they or any of them shall not be answerable or accountable for the insufficiency or deficiency of any security or securities, stocks, or funds, in or upon which the said funds, or any part thereof, shall be placed out or invested, or for the defect of title of any lands to be purchased by them or any of them as aforesaid; nor for any other misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereunto, except the same shall happen by or through their own wilful default respectively; And also that it shall and may be lawful to and for them the said trustees, in and by these presents named, and such future trustee or trustees to be appointed as hereinbefore is mentioned, and every or any of them, their and every or any of their heirs, executors, administrators,

and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain and reimburse himself and themselves respectively, and also to allow to his and their co-trustee and co-trustees all costs, charges, damages, and expenses which they or any of them shall or may suffer, sustain, expend, disburse, be at or be put unto in or about the execution of the aforesaid trusts, or in relation thereunto.

To appoint new trustees, with clauses of indemnity and reimbursement, and with variations. (Another form.)

CL. Provided always (*a*), and it is hereby further declared and agreed by and between the said parties to these presents, that in case all, any, or either of them the said trustees named and appointed by these presents, or any trustee or trustees to be appointed under this present provision, in their, any, or either of their place, shall depart this life, or desire to be discharged from the aforesaid trusts, or shall go to reside beyond seas, or shall neglect or refuse or become incapable to act in the said trusts before the said trusts shall be fully executed and performed, then and in that case, and as soon and as often as the same shall happen, it shall or may be lawful to and for the (*b*) said A. B. and

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To appoint additional trustees.

(*a*) If the donee of the power is to appoint *additional* trustees, the following form should be used:—

"Provided always, and it is hereby further declared, &c., that it shall or may be lawful to and for the said I. S. and E. his wife, during their joint lives, and to and for the said I. S. after the decease of the said E. his wife in his lifetime, to nominate and appoint any one or two fit person or persons to be a trustee or trustees of these presents, in addition to or in conjunction with the trustees hereby named, or who shall be appointed from time to time in their or either of their stead, under the provisions next hereinafter contained; And also, that in case both or either of them the said" &c.

(*b*) Or,—

"the person or persons for the time being entitled to the estate of immediate freehold of and in the same hereditaments." When several persons or their representatives are invested with the power, then say:—"the said A. B., C. D., E. F., &c,

may exercise the same powers, privileges, and authorities of approbation, consent, discretion, and of giving effectual receipts, maintenance, advancement, and education, and all other powers and authorities whatsoever, as if he had been appointed a trustee by these presents, and as if his name had been inserted in these presents (*a*) instead of the name of the trustee hereby appointed in or to whose place or stead such new trustee shall come or succeed (*b*): Provided also, and it is hereby declared and agreed by and between all the parties to these presents, as far as they respectively are interested, that each of the said several trustees hereby nominated and appointed, and the trustees to be appointed by virtue of the provision last hereinbefore contained, and their respective heirs, executors, and administrators, shall be charged and chargeable only for such monies as the same trustee and trustees respectively shall actually receive by virtue of the trusts hereby reposed in him and them, notwithstanding his or their or any of their giving or signing, or joining in giving or signing any receipt or receipts for the sake of conformity (*c*): And that any one or more of them shall not be answerable or accountable for the acts, receipts, neglects, or defaults of the other or others of them, but each and every

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(*a*) Or,—

"in addition to the names of the trustees hereby appointed, or (as the case may be) instead of the trustee hereby appointed," &c.

(*b*) The following is sometimes added :—

"And further, that if the said E. F. shall attain his age of twenty-one years, and shall be willing to act as a trustee in the place and stead of the said A. B., then the said A. B. shall cease to be a trustee, and the said E. F. shall become a trustee in his place or stead, and all such transfers &c. shall be made as shall be necessary or proper to give full and complete effect to that arrangement."

(*c*) Or,—

"in executing any letter or letters of attorney enabling any one or more of them to act in the absence of the other or others of them."

of them only and respectively for his own acts, receipts, neglects, or defaults respectively; and that he, they, or any of them shall not be answerable or accountable for any banker, broker, or other person with whom or in whose hands any part of the said trust monies (*a*) shall be deposited or lodged for safe custody or otherwise; and that he, they, or any of them shall not be answerable or accountable, in the execution of the trusts hereinbefore contained, for the rise or fall in the price or value of the funded property, or the insufficiency or deficiency in title or value of any security or securities, stocks or funds, in or upon which the said trust monies, or any part thereof, shall be placed out or invested; nor for any other misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same should happen by or through his or their own wilful default respectively; and in that case each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his or her own default; And also, that it shall and may be lawful to and for the said trustees in these presents named, and such future trustee or trustees to be appointed as aforesaid, and every of them, their and every of their heirs, executors, and administrators (*b*), by and out of the money which shall come to his and their respective hands by virtue of the trusts aforesaid, to deduct, retain, and reimburse to and for himself and themselves respectively, and also to allow to his and their co-trustee all costs, charges, damages, and expenses, and fees to counsel for advice, which he, they, or any of them shall or may suffer, sustain, disburse, or be put unto in or about the execution of the aforesaid trusts, or in relation

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(*a*) Or,—

"rents of the said trust estates."

(*b*) Or,—

"to settle and allow, in his or their discretion, all or any of the accounts relating to the trust monies hereby agreed to be settled, so as to bind all persons claiming the benefit of these presents."

thereto (*a*); And also to settle, adjust, and allow the accounts of any trustee or trustees who shall depart this life, or be desirous of being discharged of and from the aforesaid trusts, or who shall go to reside beyond seas, or shall neglect or refuse or become incapable to act in the said trusts, and in whose place or stead a new trustee or trustees shall be

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(*a*) In the will of a trader,—

"And that the said trustee or trustees for the time being of this my will shall be entitled to make the usual and accustomed charges as an attorney or solicitor for all business which shall be transacted, and all trouble which shall be taken by him in the execution of the trusts hereby reposed in him; and also that it shall and may be lawful to and for my said trustee and trustees for the time being, in his, her, or their discretion, to compound any debt or debts owing or to be owing to me or my trust estate, and to accept part thereof in full of the same, or to give or allow an enlarged day for the payment thereof, and also to sign the certificate of any bankrupt, and to pay any debts which shall be claimed to be owing from me, in such manner and on such evidence as he, she, or they shall think proper to admit; and that he, she, or they shall or may refer to arbitration or arbitrations and umpirage any difference which, in the execution of the said trusts, shall or may arise between him or them, and any other person or persons who is or are or shall or may claim to be a debtor or debtors to, or creditor or creditors of my said trust estate; and that the award or determination which shall be made on such reference or umpirage shall be binding and conclusive on all persons claiming any benefit under this my will; and that all or any part of my stock in trade may be sold on credit, or with an allowance of a day or days of payment, and a bill or bills accepted for the produce of such sale as to my said trustee or trustees for the time being shall seem meet; and I direct that all, any, or either of the powers, trusts, and authorities given by this my will, and to be exercised by any trustee or trustees, shall or may be exercised by him or them, either in person or by attorney, with or without a discretion to be given to such attorney or attornies."

appointed as aforesaid; and also to receive and give discharges for the money which shall appear to be the balance of the same accounts, without any responsibility in the person or persons paying the same money to see to the application thereof, or be answerable or accountable for the misapplication or nonapplication of the same.

To appoint new trustees, with clauses of indemnity and reimbursement. (Humphreys).

CLI. Provided always, and it is hereby agreed and declared between and by the parties hereto, that if the trustees hereby appointed, or any of them, or any future trustee or trustees to be appointed in the stead or place of them, or any of them, or of any succeeding trustee or trustees as hereinafter is mentioned, shall die or go to reside beyond the seas, or shall be desirous of being discharged from, or decline, or become incapable to act in the trusts hereby in them respectively reposed or authorized to be reposed, before the said trusts shall be fully executed or at an end, then and in such case, and so often as the same shall happen, it shall and may be lawful for the said A. B. and C. D., or the survivor of them, during their, his, or her lives and life, and after the decease of the survivor of them, for the guardian or guardians of any infant child or children of the said intended marriage, who shall be interested in the said manor, messuages, lands, and other hereditaments herein comprised, or any part thereof, under the uses, trusts, and powers hereinbefore contained, or any of them; but if there be no such guardian, then for the surviving or continuing trustee, or the executors or administrators of the surviving trustee respectively, by any writing or writings under their, his, or her hands and seals or hand and seal, from time to time to substitute or appoint any person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying, going to reside beyond the seas, desiring to be discharged, declining or becoming incapable to act as aforesaid; and that when and so often as any new trustee or trustees shall be appointed as aforesaid, all and singular the uses, trusts, and powers hereinbefore declared of and concerning the said manor, messuages, lands, and other hereditaments hereby released or intended so to be, and also of and concerning any hereditaments to be acquired under the afore-

thereto (*a*); And also to settle, adjust, and allow the accounts of any trustee or trustees who shall depart this life, or be desirous of being discharged of and from the aforesaid trusts, or who shall go to reside beyond seas, or shall neglect or refuse or become incapable to act in the said trusts, and in whose place or stead a new trustee or trustees shall be

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(*a*) In the will of a trader,—

"And that the said trustee or trustees for the time being of this my will shall be entitled to make the usual and accustomed charges as an attorney or solicitor for all business which shall be transacted, and all trouble which shall be taken by him in the execution of the trusts hereby reposed in him; and also that it shall and may be lawful to and for my said trustee and trustees for the time being, in his, her, or their discretion, to compound any debt or debts owing or to be owing to me or my trust estate, and to accept part thereof in full of the same, or to give or allow an enlarged day for the payment thereof, and also to sign the certificate of any bankrupt, and to pay any debts which shall be claimed to be owing from me, in such manner and on such evidence as he, she, or they shall think proper to admit; and that he, she, or they shall or may refer to arbitration or arbitrations and umpirage any difference which, in the execution of the said trusts, shall or may arise between him or them, and any other person or persons who is or are or shall or may claim to be a debtor or debtors to, or creditor or creditors of my said trust estate; and that the award or determination which shall be made on such reference or umpirage shall be binding and conclusive on all persons claiming any benefit under this my will; and that all or any part of my stock in trade may be sold on credit, or with an allowance of a day or days of payment, and a bill or bills accepted for the produce of such sale as to my said trustee or trustees for the time being shall seem meet; and I direct that all, any, or either of the powers, trusts, and authorities given by this my will, and to be exercised by any trustee or trustees, shall or may be exercised by him or them, either in person or by attorney, with or without a discretion to be given to such attorney or attornies."

appointed as aforesaid; and also to receive and give discharges for the money which shall appear to be the balance of the same accounts, without any responsibility in the person or persons paying the same money to see to the application thereof, or be answerable or accountable for the misapplication or nonapplication of the same.

To appoint new trustees, with clauses of indemnity and reimbursement. (Humphreys).

CLI. Provided always, and it is hereby agreed and declared between and by the parties hereto, that if the trustees hereby appointed, or any of them, or any future trustee or trustees to be appointed in the stead or place of them, or any of them, or of any succeeding trustee or trustees as hereinafter is mentioned, shall die or go to reside beyond the seas, or shall be desirous of being discharged from, or decline, or become incapable to act in the trusts hereby in them respectively reposed or authorized to be reposed, before the said trusts shall be fully executed or at an end, then and in such case, and so often as the same shall happen, it shall and may be lawful for the said A. B. and C. D., or the survivor of them, during their, his, or her lives and life, and after the decease of the survivor of them, for the guardian or guardians of any infant child or children of the said intended marriage, who shall be interested in the said manor, messuages, lands, and other hereditaments herein comprised, or any part thereof, under the uses, trusts, and powers hereinbefore contained, or any of them; but if there be no such guardian, then for the surviving or continuing trustee, or the executors or administrators of the surviving trustee respectively, by any writing or writings under their, his, or her hands and seals or hand and seal, from time to time to substitute or appoint any person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying, going to reside beyond the seas, desiring to be discharged, declining or becoming incapable to act as aforesaid; and that when and so often as any new trustee or trustees shall be appointed as aforesaid, all and singular the uses, trusts, and powers hereinbefore declared of and concerning the said manor, messuages, lands, and other hereditaments hereby released or intended so to be, and also of and concerning any hereditaments to be acquired under the afore-

said power of sale or exchange, or such of the said uses, trusts, and purposes as shall be then subsisting or capable of taking effect, shall from thenceforth cease, determine, and be utterly void, as far as respects any trustee or trustees in whose place any such trustee or trustees shall be appointed, and his or their heirs; and all the same hereditaments shall go and remain to the uses, upon and for the trusts, intents, and purposes, and with and subject to the powers and provisoes to, upon, for, with, and subject to which the same or any of them would, at the time every or any such appointment under and by virtue of these presents, or any conveyance or assurance to and for the uses and purposes aforesaid, thereof stand and be limited, settled, subject, and liable respectively, in case the name or names of the new trustee or trustees so to be appointed from time to time had been inserted in these presents, or any such conveyance or assurance as aforesaid, instead of the name or names of the trustee or trustees in whose stead or place such trustee or trustees shall be appointed, or instead of the name or names of any preceding trustee or trustees; and also upon every such appointment of a new trustee or trustees, all the trusts, estates, monies, and premises, which at the time of such trustee or trustees so dying, going to reside beyond the seas, desiring to be discharged, declining, or becoming incapable to act as aforesaid, shall be legally vested in him or them, either solely or jointly with the other trustee or trustees, (not being hereditaments as to which the old uses shall partially cease, and new uses arise as aforesaid), shall be thenceforth with all convenient speed conveyed, assigned, and transferred respectively, in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee, and such new or other trustees; or if there shall be no continuing trustee, then in such new trustees only, upon and with the same trusts and powers as are hereinbefore declared and contained of and concerning the same trust estates, monies, and premises, or such of them as shall or may be then subsisting or capable of taking effect; And that every such new trustee shall and may in all things act and assist in the management and execution of the trusts to which he shall be appointed as fully and effectually, and

with all the same powers and authorities to all constructions and purposes whatsoever, as if he had been originally nominated a trustee by and for the purposes of these presents. Provided always, and it is hereby agreed and declared that the trustees for the time being, for the purposes aforesaid, and every of them, and their respective heirs, executors, and administrators, shall be severally charged and chargeable only for such monies as they shall actually receive by virtue of the trusts aforesaid, although they or any of them may give, sign, or join in any receipt or receipts for the sake of conformity; and that none of them shall be answerable or accountable for the other or others of them, nor for any banker, broker, or other agent or person with whom any part of the said trust monies shall or may be deposited or lodged in the execution of the aforesaid trusts; nor for the insufficiency or deficiency of any security or securities, stocks or funds, in or upon which the said trust monies or any part thereof may be placed out or invested; nor for any defect of title in any hereditaments to be purchased or taken in exchange, or in mortgage as aforesaid; nor for any other misfortune or loss in the execution of the aforesaid trusts, or any of them, except the same shall happen by or through their own wilful default respectively; and that it shall and may be lawful to and for the trustees for the time being, and every of them, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain to and reimburse themselves, and also to allow to his and their co-trustee or co-trustees, all costs, damages, and expenses which they or any of them shall or may suffer, disburse, or incur in or about the execution of the aforesaid trusts, or any of them, or in relation thereto.

To appoint new trustees, with declaration of indemnity and reimbursement. (Shorter form).

CLII. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that if any of the trustees hereby appointed or to be appointed as hereinafter is mentioned shall depart this life, or decline or become incapable to act in the trusts hereby created, then and in every such case it shall be lawful for the said E. F. and G. H. during their joint lives, and after the death of one of them, for the survivor of them during his or

her life, and after the decease of such survivor, for the surviving or continuing trustee or trustees for the time being, or the executors or administrators of the last surviving or continuing trustee for the time being, by any deed or writing, to be sealed and delivered by them, him, or her respectively, in the presence of and attested by two or more credible witnesses, to appoint one or more person or persons to be a trustee or trustees in the room of the trustee or trustees so dying, declining, or becoming incapable to act therein as aforesaid; and upon the appointment of any new trustee or trustees as aforesaid, all the said trust estate, monies, and premises shall be forthwith conveyed and assured to and vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as occasion shall require; and every such new trustee shall have such and the same powers and authorities and discretion, to all intents and purposes whatsoever, as if he had originally been nominated a trustee in these presents. Provided also, that the trustees hereby appointed or to be appointed by virtue of the proviso lastly hereinbefore contained, and each and every of them, shall be charged and chargeable respectively only for such monies as they shall respectively actually receive by virtue of the trusts hereby in them reposed, notwithstanding his, her, or their giving or signing, or joining in giving or signing any receipt or receipts for the sake of conformity; and any one or more of them shall not be answerable or accountable for the others or other of them; and that they or any of them shall not be answerable or accountable for any loss, misfortune, or damage which may happen in the execution of the aforesaid trusts, or in relation thereunto (except the same shall happen by or through their own wilful default respectively); and that it shall be lawful for the said trustees hereby appointed and to be appointed as aforesaid, and every or any of them, their and every or any of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their or his respective hands by virtue of the trusts aforesaid, to retain and reimburse themselves and himself, and also to allow to his and their co-trustee and co-trustees all costs, charges, damages, and expenses which they or any of them shall or may sustain, expend, disburse,

or be put unto, in or about the execution of the aforesaid trusts, or in anywise relating thereto.

To appoint new trustees, with declaration of indemnity and reimbursement. (Short form).

CLIII. Provided also, that if any of the trustees hereby appointed or to be appointed as hereinafter is mentioned shall depart this life, or decline to act in the trusts hereby in them reposed, then and in such case it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, during their, his, or her lives or life, and after the decease of such survivor, for the surviving or continuing trustees or trustee, or the executors or administrators of the last trustee, to appoint one or more person or persons to be a trustee or trustees in the room of the trustee or trustees so dying or declining to act; and thereupon the said trust estates, monies, and premises shall be vested in the same trustee or trustees solely or jointly with the surviving or continuing trustee or trustees as occasion shall require; and every new trustee shall have the same powers and authorities to all intents and purposes as if he had been originally nominated a trustee in these presents. Provided also, that the trustees hereby appointed or to be appointed as hereinbefore is mentioned shall not be answerable or accountable the one for the other of them, or for the signing receipts for the sake of conformity, or for any involuntary loss; and that it shall be lawful for them to reimburse themselves their costs and expenses in discharging their trusts.

To appoint new trustees. (In wills).

CLIV. Provided always, and I do hereby declare, that in case the before-named trustees, or any of them, or any succeeding trustees or trustee to be nominated as hereinafter is mentioned, shall die, or be desirous to be discharged from, or refuse or become incapable to act in the aforesaid trusts before the same shall have been fully satisfied or performed, then and so often as the same shall happen it shall and may be lawful to and for the surviving or continuing trustees or trustee of the trust premises, the trustees or trustee of which shall so die, desire to be discharged, or decline or refuse or become incapable to act as aforesaid, by any note or writing under their or his hands or hand to nominate, substitute, and appoint any other person or persons to be a

trustee or trustees in the stead or place of the trustee or trustees who shall so die, or be desirous to be discharged, or refuse, decline, or become incapable to act as aforesaid; and that when and so often as any such new trustee or trustees shall be nominated as aforesaid, all and every the trust estate and premises respectively, the trustees or trustee of which shall so die, be desirous to be discharged, or refuse, decline, or become incapable to act as aforesaid, shall thereupon, with all convenient speed, be conveyed, assigned, and transferred respectively in such sort and manner, and so that the same may be legally and effectually vested in the newly appointed trustee or trustees jointly with the continuing former trustee or trustees of the said trust premises; or in case there shall be no continuing trustee of the said trust premises, then in such newly appointed trustee or trustees only, to the several uses, upon the several trusts, and to and for the several intents and purposes hereinbefore by me expressed and declared of and concerning the same trust premises respectively, of which the trustee or trustees shall so die, be desirous to be discharged, or refuse, decline, or become incapable to act as aforesaid; and so that every such new trustee shall and may in all respects act and assist in the management, carrying on, and execution of the trusts to which he shall be so appointed as aforesaid, as fully and effectually, and with all such and the same powers and authorities whatsoever, as if such new trustees or trustee had been originally by me appointed and nominated, and as the surviving or continuing trustees or trustee could have done by virtue of or under this my will (*a*).

To appoint new trustees, with clauses of indemnity and reimbursement. (Short form, in wills).

CLV. Provided also, that if either of the said trustees hereby appointed or to be appointed as hereinafter is mentioned, shall depart this life or decline or become incapable to act in the trusts hereby reposed in them respectively, then and so often as it shall so happen, it shall be lawful for the surviving or continuing trustee for the time being, his executors or administrators, but with the consent in writing

(*a*) Add clauses of indemnity and reimbursement.

of my said wife, during her life, by any writing or writings under his or their hand or hands, to appoint one or more person or persons to be a trustee or trustees in the room of the trustee or trustees so dying, or refusing or becoming incapable to act as aforesaid; and thereupon the said trust estates, monies, and premises, shall be vested in the new trustee or trustees jointly with the remaining trustee, or solely, as occasion shall require; and every such new trustee or trustees shall have the same powers and authorities and discretion to all intents and purposes whatsoever, as if he or they had been originally nominated a trustee or trustees in this my will. And I hereby further declare my will and mind to be, that the trustees hereby appointed or to be appointed as aforesaid shall not be answerable the one for the other of them, nor for involuntary losses; and that it shall and may be lawful for them to reimburse themselves, and to allow to their or his co-trustee or co-trustees their costs and expenses respectively in discharging the trusts hereby in them reposed.

That a certain person (now a minor) shall be a trustee when of age, jointly with other trustees. (In wills).

CLVI. Provided always, and I direct that A. B. my brother in law shall, from and after he shall attain the age of twenty-one years, and thenceforth, be deemed one of the trustees hereinbefore named as fully and effectually, to all intents and purposes, as if he had been named one of the said trustees, and the said trust estates and property had been devised to and to the use of the said trustees jointly with the said A. B., and to their heirs, executors, administrators, and assigns, any thing hereinbefore contained to the contrary notwithstanding; but I direct that the minority of the said A. B. shall not suspend or delay the execution of all or any of the trusts of this my will; and that on the contrary, the consent or concurrence of the said A. B. shall not during his minority be essential or necessary to the exercise or performance of all or any of the same trusts.

For trustees to appoint each other attorney. (In wills).

CLVII. And I hereby further direct, that for the purpose of facilitating the execution of all or any of the trusts of this my will, it shall and may be lawful to and for any one

or more of the said trustees for the time being to appoint any other or others of them his or their attorney or attornies to act in the exercise or execution of the same trusts, as far as respects the sale or disposition of all or any of my trust estates hereby directed to be sold, or the management or cultivation of any of my plantations, and to enter into any contract or contracts for sale, and to execute any conveyance or conveyances for carrying the same sale or sales into effect, and giving receipts or other discharges for the purchase money; and that the trustee or trustees so deputing or appointing another or others of them, shall not be in any manner answerable or accountable for any act or acts which shall be done, or any money which shall be received by virtue of such authority; since I consider it beneficial to the persons interested in the produce of my trust property, that such authority should be given when and as often as it shall be deemed expedient, as a means of facilitating the execution of the trusts of this my will, and providing against any inconvenience in the number of trustees, or the residence of some of them at a distance from the place at which the trusts are to be most conveniently carried into effect.

For two persons respectively to appoint new referees, and for referees to appoint another, and to enlarge time for making their determination.

CLVIII. Provided always, and in case each or either of them the said A. B., C. D., and E. F. shall depart this life before such valuation and determination shall be made, then it shall be lawful to and for the said G. H., his executors, administrators, or assigns, to appoint another referee in the place or stead of the said A. B., and to and for the said I. K., his executors, administrators, or assigns, to appoint another referee in the place or stead of the said C. D., and to and for the said A. B. or the referee who shall be appointed in his place or stead, and also to and for the said C. D. or the referee who shall be appointed in his place or stead, to join together in naming another referee in the place or stead of the said E. F.; and that such referees for the time being, or any two of them, shall have and may exercise the authorities hereinbefore contained and given to the said A. B., C. D. and E. F., or any two of them; and that the referees, or any two of them, shall have and may exercise the

power of enlarging the time for making such their valuation and certifying their determination, till any time not exceeding the —— day of ——.

To supply a vacancy in the number of referees by death, and to enable new referees to proceed on the resolutions of the former referees, &c.

CLIX. Provided always, and in case all or any or either of them the said A. B., C. D., and E. F., or any person or persons to be substituted in their or any or either of their place, shall depart this life before such final award or determination as aforesaid shall be made, then and in that case it shall or may be lawful to and for the said G. H., as to the said A. B. or the person who from time to time shall be substituted in his place, and to and for the said I. K., as to the said C. D. or the person who from time to time shall be substituted in his place, and to and for the referees for the time being, as to the said E. F. or the person who from time to time shall be substituted in his place, to nominate and appoint, from time to time, a referee or referees in the stead or place of the referee or referees so dying; and that every referee so appointed shall have all such powers and authorities as the person or persons in whose place he shall be substituted; and that the referees for the time being shall carry on the proceedings of the former referees without entering anew on the matters in difference, and accordingly shall adopt the resolutions of the former referees, as far as the same referees shall have made any progress in the settlement of the accounts, or in adjusting the matters in difference, and shall have come to any resolution concerning any item or items thereof, so as such resolution shall appear by writing under the hands of the said referees for the time being, or some two of them; and that the several covenants and agreements hereinbefore contained shall extend to the award or determination of the referees for the time being, and to their directions, orders, and regulations, as fully and effectually as if the person or persons appointed in the place of any deceased referee or referees had been originally named and appointed by these presents; and that any two of the said referees for the time being shall be competent to proceed on the matters in difference; and that it shall be no objection to the award of two of the said referees, that both of them

were not present at the discussion of all matters in difference.

For lessee if distrained upon during the term assigned, to distrain on the premises not assigned (*a*).

CLX. Provided always, and the said A. B. doth for himself, his heirs, executors, administrators, and assigns, covenant and grant with and to the said C. D., his executors, administrators, and assigns, that if at any time or times hereafter, during the continuance of the said term of ninety-nine years, any distress or distresses shall be made in or upon the said messuage or premises hereinbefore assigned, or expressed and intended so to be, or any part thereof, by the person or persons for the time being claiming to be entitled to the said yearly rent of £——, for the same yearly rent of £——, or any part thereof, then and in such case, and from time to time, and as often as it shall so happen, it shall and may be lawful to and for the said C. D., his executors, administrators, and assigns, into and upon all and every the said messuage or tenements and premises, demised or intended to be demised by the said hereinbefore in part recited indenture of lease, which are not hereinbefore assigned, or expressed and intended so to be, to enter, and distrain for all such sum or sums of money, costs, charges, damages, and expenses as he the said C. D., his executors, administrators, or assigns, shall pay, sustain, be at, or be put unto, by reason, on account, or in consequence of any such distress or distresses being so made in or upon the said messuage or tenement and premises hereinbefore assigned, or expressed and intended so to be, or any part thereof, by the person or persons claiming to be entitled to the said rent; and the distress or distresses then and there taken, by or by the order of the said C. D., his executors, administrators, or assigns, to take, carry, drive away, impound, and in pound to detain and keep until such sum and sums of money, costs, charges, damages, and expenses as aforesaid, and all the costs, charges, damages, and expenses of, in, or about, or relating to the same distress or distresses, shall be fully satisfied

(*a*) For common form of Powers of Distress and Entry, vide Tit. VI. arts. ix. and xi.

and paid to the said C. D., his executors, administrators, or assigns, in due time after such distress or distresses shall be so made or taken; or otherwise to appraise, sell, and dispose of the same distress or distresses, or otherwise to demean therein according to law, in the like manner as in the case of distresses taken for rent reserved by lease or common demise; to the end and intent that the said C. D., his executors, administrators, and assigns, may be thereby fully satisfied, and paid all such sum and sums of money, costs, charges, damages, and expenses, as he or they or any of them shall so pay, sustain, be at, or be put unto as aforesaid, and also all costs, charges, damages, and expenses, of, in, about, or relating to the said last-mentioned distress and distresses.

TITLE IX.

OF PROVISOES AND DECLARATIONS.

To prevent dower, conformably to the stat. 3 & 4 Will. 4, c. 105.

I. 1. AND the said A. B. doth hereby declare that no widow of him the said A. B. shall be entitled to dower out of the messuages, lands, and other hereditaments (*a*) hereinbefore released or otherwise assured, or intended so to be, or any part thereof (*b*).

2. And I the said A. B. do hereby declare that no widow of mine shall be entitled to dower out of any manors, advowsons, messuages, or any other hereditaments, whether corporeal or incorporeal, or out of any share thereof, of which I shall die wholly or partially intestate.

That provision for wife shall be in lieu of tierce of lands and half or third of moveables, according to the law of Scotland.

II. And it is hereby declared and agreed by and between the parties to these presents, and the said A. B. doth hereby consent and agree, that the provision hereby made for the said A. B. shall be and be accepted by her, and she doth hereby accept the same in lieu, bar, recompence, and full satisfaction of and for all manner of tierce of lands, half or third of moveables, or other rights or benefits whatsoever, to which the said A. B. can or may be entitled of or in the estate and effects of the said C. D. her said intended husband, by virtue of the laws of Scotland (*c*). And it is hereby also provided,

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(*a*) Or, if by a separate deed,—

" comprised in and conveyed by the said hereinbefore in part recited indentures of" &c.

(*b*) For form of limitations to prevent dower, which ought still to be used when it is intended to exclude the dower of any one married on or before the 1st January, 1834, vide Tit. VI. arts. v. and vi. And for the provisions of the Dower Act, see book i. App., p. 265 of the first volume of this work.

(*c*) According to the Scottish law, the widow of an heritable proprietor, who has been married to her for " year and day," or has had a liv-

declared, and agreed, that the trusts and provisions hereinbefore contained, and every of them, shall be and remain in full force, notwithstanding the death of either of them the said C. D. and A. B. within a year and a day after the solemnization of the said intended marriage, and without any issue of the same marriage having been born alive, any law, usage, or custom of Scotland to the contrary in anywise notwithstanding (*a*).

III. And it is hereby directed, declared, and agreed by and between the several persons parties to these presents, as far as they respectively are interested, that the said real and personal estates, so far as relates to or concerns the joint tenancy in the personal estates and the sole power of appointment over the real estate, shall be held upon, under, and subject to the trusts hereinafter expressed and declared concerning the same; (that is to say), as to, for, and concerning one undivided moiety or half part, the whole into two equal parts or shares to be divided, of and in the same plantations, tracts of land, [negroes or slaves,] implements, live and dead stock, and hereditaments with their appurtenances, in trust for the said A. B., his heirs, executors, administrators, and assigns for ever; And as to, for, and concerning the other or remaining undivided moiety or half part of the same plantations, tracts of land, negroes or slaves, implements, live and dead stock, and hereditaments with their appurtenances,

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ing child by her, is entitled to the "tierce" or life-rent, provided she has not accepted a special provision in lieu of it. The "tierce" extends to one-third of all lands, tiends, (if vested by separate infefftments), and heritable securities, in which, at the time of her husband's death, he stood vested as of fee by infefftment. Bell's Commentaries on the Laws of Scotland, i. 43, 547, 4to edit. Erskine's Inst., tit. vi. sect. 38—41.

(*a*) This clause was suggested by a writer to the signet in consequence of a peculiarity in the law of Scotland, by which, in the event of a marriage dissolving within a year and day from the solemnization thereof, by the decease of either party, without a living child being procreated of the marriage (unless provision is made to the contrary in the marriage contract), the rights of both parties are brought back to the same situation in which they were at the time of marriage. Bell's Com. i. 547. Erskine's Inst., tit. vi. sect. 38—41.

in trust for the said C. D., his heirs, executors, administrators, and assigns for ever; which joint tenancy and sole power of appointment are respectively created to avoid the inconvenience which might arise from the possibility of the death of either of them the said A. B. and C. D., prior to the execution of these presents, by the grantors respectively therein named (*a*).

That the sums of money secured by bills of exchange, shall not be a lien on the premises sold. (Where part of the consideration was in bills of exchange).

IV. And it is hereby directed and declared by and between the several persons parties to these presents, as far as they respectively are interested, that the plantations [negroes, slaves], hereditaments, stock of cattle, and implements, and other property respectively hereby released and assigned, or otherwise assured, or intended so to be, or any of them, shall not at any time after the execution of these presents, either by way of equitable lien, or in any other manner, or by any other means, be charged or chargeable with, or liable to the payment of all or any part of the said sums of £——, £——, and £——, although the same sums respectively should not be duly paid according to the purport, true intent, and meaning of the said bills of exchange given for the payment of the same sums respectively (*b*).

That the lands shall forthwith be considered as personal property. (Added to trusts for sale).

V. And (*c*) the said A. B. doth hereby declare and direct that immediately after the execution of these presents, all the estate, right, title, and interest of him the said A. B. in the said messuages &c., and also the rents, income, and produce of the same, in the meantime, till the same shall be sold under the trusts hereinbefore contained, shall be con-

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(*a*) The grantors, being in England, might, at the time of executing the deed, be ignorant of the death of one of the joint grantees, in which case, if the land had been conveyed to them as tenants in common, the grant would have been void for a moiety.

(*b*) Vide Vol. I. book ii. chap. iii., and Vol. II. part i. tit. i. art xi. note.

(*c*) Or,—

"For the purpose of securing and establishing the right of the executors, administrators, and assigns of the said A. B. to such purchase-money."

sidered as or in the nature of personal property, for the benefit of him the said A. B., his executors, administrators, and assigns; and that as between the heirs of the said A. B. and his executors and administrators, the executors or administrators of him the said A. B. shall be entitled to the said trust monies, rents, income, and produce, in preference to and in exclusion of the heirs at law of the said A. B., although such sale or sales shall be made after the decease of the said A. B.

Another form.

VI. And it is hereby understood and agreed, that in the meantime and until such payment shall be made, and also after the death of the said A. B., in case such sale or sales shall not be made in his lifetime, all the right &c. of the said A. B. in the said messuages &c. shall be considered as or in the nature of personal property, for the benefit of the said A. B., his executors, administrators, and assigns, in preference to and in exclusion of his heirs.

For redemption of mortgage.

VII. Provided always, and it is hereby agreed and declared between and by the said A. B. and the said C. D., and the true intent and meaning of them and of these presents nevertheless is, that if the said C. D., his heirs, executors, administrators, or assigns (*a*), shall (*b*) well and truly pay or cause to be paid unto the said A. B., his executors, administrators, and assigns, the sum of £—— of lawfu

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(*a*) Or,—

" the said E. F., his heirs, executors, administrators, or assigns, on the behalf and as the surety of the said C. D."

(*b*) Or,—

" do and shall also reimburse and pay to the said A. B. and E. F., or the survivor of them, or the executors, administrators, or assigns of such survivor, all and every sum and sums of money (if any) which he or they shall have advanced and paid for the purpose of redeeming the said term of —— years, or causing the cesser of the same term, and in payment, satisfaction, and discharge of the principal money, interest, and costs then due on the security of the same term" &c.

money of Great Britain, and the sum of £—— of like lawful money, as and for one year's interest for the same, after the rate of £5 for every £100 for a year, making together the sum of £——, in the parts, shares, and proportions, and on or at the day or times hereinafter mentioned, (that is to say), the sum of £——, part thereof, being half a year's interest for the said sum of £——, after the rate aforesaid, on the —— day of —— next ensuing the day of the date of these presents which will be in the year 18—, and the sum of £——, residue thereof, being the whole of the said principal sum of £——, and another half year's interest for the same, after the rate aforesaid, on the —— day of —— then next following which will be in the said year 18—, without any deduction or abatement whatsoever out of the same, or any part thereof, for or on account of any present or future taxes, charges, rates, assessments, payments, or impositions, or any other matter, cause, or thing whatsoever; then and in such case, from and immediately after such payment shall be so made as aforesaid, he the said A. B., his heirs, executors, administrators, or assigns, shall and will, upon the request and at the proper costs and charges of the said C. D., his heirs or assigns, reconvey the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, unto the said C. D., his heirs and assigns, as he or they shall in that behalf order and direct, free from all incumbrances made, done, or committed by the said A. B., his heirs, executors, administrators, and assigns.

For redemption where loan consists of stock(a).

VIII. Provided always, and it is hereby agreed and declared between and by the said A. B. and the said C. D.,

(a) It was at one time doubted whether a loan of stock was prohibited by the stat. 7 Geo. 2, c. 8, s. 8. This point arose in *Sanders* v. *Kentish*, 8 Term Rep. 162; but the Court held a loan of this kind to be within the saving of the 11th section. On this occasion Lord Kenyon observed, that if the statute were construed differently, then, instead of being intitled "An Act to prevent the infamous Practice of Stock-jobbing," it ought rather to be called, "An Act to encourage the wickedness of stock-jobbers, and to give them the exclusive privilege of cheating the rest of mankind." A loan of stock being lawful, the parties may agree

and the true intent and meaning of them and of these presents nevertheless is, that if the said C. D., his heirs, executors, administrators, or assigns shall, on the —— day of —— next ensuing the day of the date of these presents which will be in the year of our Lord 18——, transfer or cause to be transferred the sum of £—— Bank Annuities into the name or names of the said A. B., his executors, administrators, and assigns, or into the name or names of such other person or persons as he or they shall in that behalf order or direct, in the books of the governor and company of the Bank of England; and also do and shall in the meantime, and until the said sum of £—— Bank Annuities shall be so transferred as aforesaid, well and truly pay or cause to be paid unto the said A. B., his executors, administrators, and assigns, in lieu of the interest, dividends, and annual produce thereof, such sum or sums of money as the said C. D., his executors, administrators, or assigns, would have been entitled to receive as and for the interest, dividends, and annual produce of the said sum of £—— Bank Annuities, in case the same had continued standing in his or their name or names, for his and their proper use and benefit, at such time or times, and in such shares and proportions as the same interest, dividends, and annual produce would have been payable, without any deduction or abatement whatsoever out of the same or any part thereof, for or on account of any present or future taxes, charges, rates, assessments, payments, or impositions, or any other matter, cause, or thing whatsoever; then and in such case, from and immediately after such transfer and payment shall be so made as aforesaid, he the said A. B., his heirs, executors, administrators, or assigns, shall and will, upon the request and at the proper costs and charges of the said C. D., his heirs or assigns, re-convey the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, unto the said C. D., his heirs and

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that a sum of money, equal to the dividends, shall be paid in the meantime, although the dividends shall exceed five per cent. on the money produced by the sale of the stock; for the lender takes the hazard of any fluctuation in the price of the market. Coote on Mortgages, p. 356.

assigns, as he or they shall in that behalf order and direct, free from all incumbrances made, done, or committed by the said A. B., his heirs, executors, administrators, and assigns, or any of them.

For redemption of mortgage of freehold and copyhold. [*From MS. collection of John Coles, Esq.*]

IX. Provided always, and it is hereby declared and agreed by and between the said A. B. and C. D., that if the said A. B., his heirs, executors, administrators, or assigns shall, on the —— day of —— next, well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, the said sum of £—— of lawful English money, with lawful interest for the same, clear of all deductions on any account whatsoever, then the said term of five hundred years in the said freehold lands and hereditaments shall be assigned to such person or persons as the said A. B., his heirs or assigns, shall appoint; and as to the said copyhold lands and hereditaments, in case the same shall have been surrendered in the mean time, then and in such case the same shall be held by the said C. D., his heirs and assigns, in trust for the said A. B., his heirs and assigns, and to be surrendered as he or they shall direct or appoint.

For redemption on payment of advances by way of discount, &c. [*From MS. collection of John Coles, Esq.*]

X. Provided always, and it is hereby agreed and declared between and by the parties to these presents, that if the said A. B., his heirs, executors, administrators, or assigns, shall and do well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, [at or in the common dining hall of Lincoln's Inn in the county of Middlesex,] the full sum of £—— of lawful English money, together with interest for the same at the rate of £5 for every £100 by the year, on the —— day of —— next ensuing the day of the date of these presents; and also if the said A. B., his heirs, executors, administrators, or assigns, shall and do well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, [at the place aforesaid,] all and every other sum and sums of money which he the said C. D. shall at any time or times hereafter lend, pay, or advance unto or to the use or order of him the said A. B., or which he the said C. D. shall at any time or times or from time to time hereafter advance or pay in or towards payment and discharge of any bill or bills of exchange to be

drawn by him the said A. B. on him the said C. D., or by discounting or paying, at the request of the said A. B., any draft or drafts, bill or bills of exchange, note or notes of hand drawn or made by the said A. B. or any other person or persons whomsoever, together with interest for the same respectively after the rate aforesaid, to be computed from the time or respective times of payment or advancement of the same sum or sums respectively, (such further and other sums of money and interest to be respectively paid by the said A. B., his heirs, executors, or administrators, within the space of —— calendar months next after the same shall respectively be paid or advanced as aforesaid), without making any deduction, defalcation, or abatement out of the said sum of £——, or the interest thereof, or any part thereof respectively, or out of such further sum or sums of money as aforesaid, or any of them, or the interest thereof respectively, for or in respect of any taxes or otherwise howsoever; and also that if the said A. B., his heirs, executors, or administrators, shall and do from time to time well and effectually save, defend, keep harmless and indemnified the said C. D., his executors, administrators, and assigns, and every of them, of, from, and against all loss, costs, charges, damages, and expenses which he the said C. D., his executors, administrators, or assigns, or any of them, shall or may suffer, sustain, or be put unto, for or by reason or means of his accepting, paying, discounting, or honoring any such bill or bills of exchange, draft or drafts, note or notes of hand as aforesaid, or for or by reason of any other matter or thing relating to or concerning these premises, then and in such case &c. (Vide Art. VII.)

(Vide art. xi.)

XI. Provided always, and it is hereby declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that if the said A. B., his heirs, executors, administrators, or assigns, shall and do well and truly pay or cause to be paid unto the said C. D. and E. F., their executors, administrators, or assigns, the full sum of £——, of like lawful money and interest for the same sum, from the —— day of ——, at the rate of £5 per cent. per annum, on the —— day of

For redemption and cesser of term on payment of a certain sum now due, and all future advances on a banking account not exceeding a certain amount.

——, without any deduction, defalcation, or abatement out of the same or any part thereof, (other than and except &c.), and also if the said A. B., his heirs, executors, administrators, or assigns, do and shall, from time to time and at all times hereafter, when thereunto requested by the said C. D. and E. F., or the survivor of them, his executors, administrators, or assigns, well and truly pay or cause to be paid unto the said C. D. and E. F., and each of them, their and each of their executors, administrators, and assigns, all and every other sum and sums of money (if any) not exceeding in the whole, together with and including the said sum of £——, or so much thereof as shall then remain unpaid, the principal sum of £——, which from time to time shall be due and owing to him or them, either alone or jointly with his or their partner or partners for the time being, by the said A. B., his executors or administrators, upon the balance of any account between the said A. B., his executors or administrators, on the one part, and the said C. D. and E. F. or either of them, their or either of their executors or administrators, either alone or jointly with his or their partner or partners for the time being, of the other part, either for principal monies, or for or upon any consideration whatsoever, together with interest on such additional sums at the rate aforesaid, from the times at which they respectively shall become due and payable, thenceforth until payment thereof; then and in that case, and immediately from and after such payment shall be made as aforesaid, the said demise hereby made and term hereby granted shall cease, determine, and be void to all intents and purposes whatsoever; and the said promissory note shall be delivered up to be cancelled, and the said policy or instrument of insurance, and the benefit thereof, shall, on the request and at the costs and charges of the said A. B., his executors, administrators, or assigns, be assigned to or in trust for the said A. B., his executors, administrators, or assigns, any thing hereinbefore contained to the contrary notwithstanding.

For the redemption of shares on payment of a proportionate

XII. And further that as long as the said messuage, lands, tenements, and hereditaments, or any part or parts thereof, shall remain redeemable according to the rules and practice

of courts of equity, it shall or may be lawful to and for each, any, or either of them the said A. B., C. D., E. F., and G. H. respectively, his or her heirs, executors, administrators, or assigns, to redeem his, her, or their particular fourth part or share of and in the said freehold and copyhold parts of the said messuages &c. on payment of £——, part of the said sum of £——, and the interest which shall be due for or in respect of the same sum of £——, and also a proportionate part or share of the costs, charges, and expenses which shall have been incurred by the said I. K., his heirs, executors, administrators, or assigns, in recovering or endeavouring to enforce and compel the payment of the principal monies and interest which shall then remain due to him or them, on this present mortgage or security.

share of the mortgage money. (To follow the clause for enjoyment till default, in a mortgage by tenants in common).

XIII. Provided always, and notwithstanding any thing hereinbefore contained, it is hereby declared and agreed by and between the parties to these presents, and the said A. B. and C. D., and, at their instance and request, the said E. F. and G. H. hereby consent and agree, that it shall or may be lawful to and for the said I. K., his heirs, executors, administrators, or assigns, at his or their option to pay off and discharge all or any part of the said principal sum of £——, at any time before the —— day of ——, in the year ——, of not less than £—— in any one instalment, either in one sum or by such portions and instalments as he or they shall think fit, so as he or they shall first pay all arrears of interest which from time to time shall be due for or in respect of the said sum of £——, or so much and such part thereof as from time to time shall remain unpaid, and so as all or any part of the said sum of £—— shall not be paid or tendered without three calendar months' previous notice in writing, to be given to the said E. F. and G. H. or the survivor of them, his executors, administrators, or assigns, of an intention to pay off the same; and the sum or sums to be paid shall be expressed in such notice, and the same sum or sums shall be paid on the day or at the time which by such notice shall be appointed for the payment thereof; and that when and as soon as all or any part of the said sum of £—— shall be paid or tendered to the said A. B. and C. D., or the survivor

To enable mortgagor to discharge mortgage debt, either by one payment or instalments, before the time named in the proviso for redemption.

——, without any deduction, defalcation, or abatement out of the same or any part thereof, (other than and except &c.), and also if the said A. B., his heirs, executors, administrators, or assigns, do and shall, from time to time and at all times hereafter, when thereunto requested by the said C. D. and E. F., or the survivor of them, his executors, administrators, or assigns, well and truly pay or cause to be paid unto the said C. D. and E. F., and each of them, their and each of their executors, administrators, and assigns, all and every other sum and sums of money (if any) not exceeding in the whole, together with and including the said sum of £——, or so much thereof as shall then remain unpaid, the principal sum of £——, which from time to time shall be due and owing to him or them, either alone or jointly with his or their partner or partners for the time being, by the said A. B., his executors or administrators, upon the balance of any account between the said A. B., his executors or administrators, on the one part, and the said C. D. and E. F. or either of them, their or either of their executors or administrators, either alone or jointly with his or their partner or partners for the time being, of the other part, either for principal monies, or for or upon any consideration whatsoever, together with interest on such additional sums at the rate aforesaid, from the times at which they respectively shall become due and payable, thenceforth until payment thereof; then and in that case, and immediately from and after such payment shall be made as aforesaid, the said demise hereby made and term hereby granted shall cease, determine, and be void to all intents and purposes whatsoever; and the said promissory note shall be delivered up to be cancelled, and the said policy or instrument of insurance, and the benefit thereof, shall, on the request and at the costs and charges of the said A. B., his executors, administrators, or assigns, be assigned to or in trust for the said A. B., his executors, administrators, or assigns, any thing hereinbefore contained to the contrary notwithstanding.

For the redemption of shares on payment of a proportionate

XII. And further that as long as the said messuage, lands, tenements, and hereditaments, or any part or parts thereof, shall remain redeemable according to the rules and practice

of courts of equity, it shall or may be lawful to and for each, any, or either of them the said A. B., C. D., E. F., and G. H. respectively, his or her heirs, executors, administrators, or assigns, to redeem his, her, or their particular fourth part or share of and in the said freehold and copyhold parts of the said messuages &c. on payment of £——, part of the said sum of £——, and the interest which shall be due for or in respect of the same sum of £——, and also a proportionate part or share of the costs, charges, and expenses which shall have been incurred by the said I. K., his heirs, executors, administrators, or assigns, in recovering or endeavouring to enforce and compel the payment of the principal monies and interest which shall then remain due to him or them, on this present mortgage or security.

share of the mortgage money. (To follow the clause for enjoyment till default, in a mortgage by tenants in common).

XIII. Provided always, and notwithstanding any thing hereinbefore contained, it is hereby declared and agreed by and between the parties to these presents, and the said A. B. and C. D., and, at their instance and request, the said E. F. and G. H. hereby consent and agree, that it shall or may be lawful to and for the said I. K., his heirs, executors, administrators, or assigns, at his or their option to pay off and discharge all or any part of the said principal sum of £——, at any time before the —— day of ——, in the year ——, of not less than £—— in any one instalment, either in one sum or by such portions and instalments as he or they shall think fit, so as he or they shall first pay all arrears of interest which from time to time shall be due for or in respect of the said sum of £——, or so much and such part thereof as from time to time shall remain unpaid, and so as all or any part of the said sum of £—— shall not be paid or tendered without three calendar months' previous notice in writing, to be given to the said E. F. and G. H. or the survivor of them, his executors, administrators, or assigns, of an intention to pay off the same; and the sum or sums to be paid shall be expressed in such notice, and the same sum or sums shall be paid on the day or at the time which by such notice shall be appointed for the payment thereof; and that when and as soon as all or any part of the said sum of £—— shall be paid or tendered to the said A. B. and C. D., or the survivor

To enable mortgagor to discharge mortgage debt, either by one payment or instalments, before the time named in the proviso for redemption.

For raising the rate of interest on principal of mortgage from 4½ to 5 per cent. when that rate of interest becomes general.

XVII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, as far as they respectively are interested, that if at any time during the continuance of the said principal sum of £——, or any part thereof, on this present security, the rate of interest commonly payable upon loans of money by way of mortgage shall have advanced or risen to £5 per cent. per annum, and the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, shall at any time thereafter give to the said E. F., his heirs, executors, administrators, or assigns, one calendar month's notice in writing of their intention to require interest upon the said sum of £—— at and after that rate, (such notice to expire on one of the half-yearly days of payment of interest hereinbefore appointed), and shall also (if thereunto required in writing by the said E. F., his heirs, executors, administrators, or assigns, within fifteen days next after the delivery of such notice) deliver unto the said E. F., his heirs, executors, administrators, or assigns, a certificate under the hand of the actuary for the time being of the society for equitable assurances on lives and survivorships, certifying that the rate of interest then commonly payable on loans by way of mortgage is £5 per cent. per annum, then and in that case, and from and immediately after the expiration of such notice as aforesaid, and from time to time during the continuance of the said sum of £—— on the security of these presents, interest shall be and become payable by the said E. F., his heirs, executors, administrators, and assigns, upon the said sum of £——, or so much thereof as shall then remain unpaid, at and after the rate of £5 per cent. per annum, in the same or the like manner as if interest for the same sum at and after that rate had been hereby made payable immediately upon and after the execution of these presents; And it is hereby declared and agreed, that the delivery of such notice as aforesaid to any one of the heirs, executors, administrators, or assigns of the said E. F. shall be considered as a sufficient notice to all and every the person or persons liable or who may be or become liable to the payment of the interest of the said sum of £——, or any part thereof, and notwithstanding any such person or persons may be an infant

or infants under the age of twenty-one years; And also that such certificate as aforesaid of the actuary for the time being of the said society for equitable assurances shall be binding and conclusive on all persons liable, or who shall be or become liable, to the payment of the interest of the said sum of £——, or any part thereof.

XVIII. Provided always, and it is hereby further agreed and declared by and between the parties to these presents, and particularly the said A. B., C. D., and E. F. do hereby, for themselves, their heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said G. H., his heirs, executors, administrators, and assigns, in manner following, that is to say, that during such time or times as (while the said sum of £——, or any part thereof, shall remain due and owing on the security of these presents) the governor and company of the Bank of England shall discount bills, commonly called and distinguished as bills of the first class, at any rate of interest not exceeding £4 10*s.* for every £100 for the year, they the said A. B., C. D., and E. F. and their assigns, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall and will accept and take interest after the rate of £4 10*s.* for every £100 for the year for the said sum of £——, in lieu of interest after the rate of £5 for every £100 for the year, any thing hereinbefore or in the condition of the hereinbefore recited bond contained to the contrary thereof in anywise notwithstanding; And that during such time or times as (while the said sum of £——, or any part thereof, shall remain due and owing on the security of these presents) the governor and company of the Bank of England shall discount such bills as aforesaid at a rate of interest above £4 10*s.* for every £100 for the year, but below £5 for every £100 by the year, they the said A. B., C. D., and E. F., and their assigns, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall and will, in lieu of interest after the rate of £5 for every £100 for the year, accept and take such interest for the said sum of £——, or for so much thereof as shall

for the time being remain due, as shall be equal to the rate of interest at which the said governor and company of the Bank of England shall so for the time being discount above £4 10*s.*, but below £5 as aforesaid, any thing hereinbefore or in the condition of the hereinbefore recited bond contained to the contrary thereof in anywise notwithstanding.

For reduction of interest on prompt payment.

XIX. Provided always, and it is hereby declared and agreed by and between the parties to these presents, as far as they respectively are interested, and the said A. B., as to the interest of the said sum of £——, and the said C. D., as to the interest of the said sum of £——, consent and agree that from time to time and at all times during the continuance of the said sums of £—— and £——, or either of them respectively, on this security, when and as often as interest at and after the rate of £4 10*s.* for every £100 for a year shall half-yearly, on the —— day of —— and the —— day of —— in each year, or within twenty days next after each of the same half-yearly days, be paid or tendered to each or either of the said A. B. and C. D., his executors, administrators, and assigns, for or in respect of the said sum so secured to him and them as aforesaid, then and so often each or either of them the said A. B. and C. D., his executors, administrators, or assigns, to whom such interest at and after the rate of £4 10*s.* per cent. per annum shall be paid at or upon or within the times hereinbefore limited in that behalf, shall or will accept or take the same interest at the rate of £4 10*s.*, in lieu and full satisfaction of the interest at and after the rate of £5 per cent. per annum, hereby and by the said bonds reserved and made payable, any thing hereinbefore or in the said bonds contained to the contrary thereof in anywise notwithstanding; and shall and will from time to time sign and give proper and sufficient acquittances and discharges for the same interest at £5 per cent. accordingly.

For reduction of interest on prompt payment. (Another and better form).

XX. Provided always, and it is hereby agreed and declared, and the said A. B., for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said C. D., his heirs, executors,

administrators, and assigns, that if the said C. D., his heirs, executors, administrators, and assigns, do and shall during the continuance of the said sum of £——, or any part thereof, on this security, well and truly pay or cause to be paid unto the said A. B., his executors, administrators, or assigns, interest for the said sum of £——, after the rate of £4 10*s.* for every £100 by the year, by equal half-yearly payments, on the said —— day of —— and —— day of —— in each year, or within forty days next after each or any of the said days respectively, then and in such case, but not otherwise, he the said A. B., his executors, administrators, and assigns, shall and will accept and take the same in lieu of and full satisfaction for interest on the said sum of £——, after the rate of £5 per cent. per annum, in manner hereinbefore covenanted (*a*) and agreed to be paid for the same; and shall and will from time to time sign and give proper and sufficient acquittances and discharges for the same interest at £5 per cent. per annum accordingly, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

For reduction of interest on prompt payment. (Another form).

XXI. Provided always, and it is hereby agreed and declared between and by the said A. B. party hereto, and the said C. D. and E. F., that in case the interest for the said sum of £—— shall be duly and punctually paid to the said C. D. and E. F., their executors, administrators, or assigns, on the —— day of ——, 18—, next ensuing the date of these presents, and at the expiration of every succeeding period of six calendar months, during such time as the said sum of £—— shall remain due and owing on the security of these presents, or within one calendar month next after such times respectively; then and in every such case interest for the same sum, after the rate of £4 for every £100 by the year, shall be accepted and taken by the said C. D. and E. F., their executors, administrators, and assigns, in lieu and full satisfaction of the interest which would otherwise be payable for the same.

That while interest shall be paid according

XXII. Provided always, and it is hereby further agreed and declared between and by the said A. B. party hereto,

(*a*) Vide Tit. X. "Of Covenants."

to the preceding proviso, mortgagee shall not call in the mortgage for seven years.

and the said C. D. and E. F., that if the said sum of £—— and interest shall not be paid on the said —— day of ——, 18—, hereinbefore limited for payment thereof, and the said A. B. party hereto shall well and truly pay or cause to be paid unto the said C. D. and E. F., their executors, administrators, or assigns, the interest for the said sum of £——, after the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, or within one calendar month afterwards, then and in such case the said C. D. and E. F., their executors, administrators, or assigns, or any of them, shall not nor will before the —— day of —— which will be in the year 18—, call upon or compel the said A. B. party hereto to pay them the said C. D. and E. F., their executors, administrators, or assigns, the said sum of £——, or any part thereof.

That waiver of right to call in mortgage-money on default of prompt payment shall not prejudice right on subsequent default.

XXIII. Provided always, and it is hereby further agreed and declared between and by the said A. B. party hereto, and the said C. D. and E. F., that if at any time or times the interest for the said sum of £—— shall be in arrear and unpaid for one calendar month after either of the days or times on which such interest is hereinbefore made payable, and the same interest being in arrear, the said C. D. and E. F., their executors, administrators, or assigns, or any of them, shall nevertheless neglect or forbear to call upon and compel the said A. B. party hereto to pay to the said C. D. and E. F., their executors, administrators, or assigns, the said sum of £——, or shall accept the interest which shall be so in arrear, then and in such case the said C. D. and E. F., their executors, administrators, or assigns, or any of them, shall not by such neglect or forbearance, or by such their acceptance of any such interest as aforesaid, be precluded or prevented from calling upon and compelling the said A. B. party hereto to pay to the said C. D. and E. F., their executors, administrators, or assigns, the said sum of £——, or from using before the said —— day of ——, 18—, any powers or remedies for enforcing the said A. B. party hereto to pay the same, or from filing a bill for foreclosure of the said several manors, &c. hereby released or otherwise assured, or intended so to be, or any of them, or any part thereof.

That if mortgagor shall die before the time limited for calling in mortgage money, the mortgagees may nevertheless require payment from mortgagor's representatives.

XXIV. Provided always, and it is hereby further agreed and declared between and by the said A. B. party hereto, and the said C. D. and E. F., that if the said A. B. party hereto shall depart this life at any time before the said —— day of ——, 18—, then and in such case it shall be lawful for the said C. D. and E. F., their executors, administrators, or assigns, to call upon and compel the heirs, executors, administrators, or assigns of the said A. B. party hereto, on or at any time after the said —— day of —— next, (in case the said A. B. party hereto shall depart this life previously to the same day), or at any time after his death, (in case the said A. B. party hereto shall depart this life on or at any time after the said —— day of —— next), to pay to the said C. D. and E. F., their executors, administrators, or assigns, the said sum of £——, anything bereinbefore contained to the contrary notwithstanding (*a*).

That loan shall not be called in for a certain number of years.

XXV. Provided also, and it is hereby further agreed and declared between and by the said A. B. and the said C. D., that in case the said C. D., his heirs, executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said A. B., his executors, administrators, or assigns, interest for the said sum of £——, after the rate aforesaid, on the —— day of ——, and from thenceforth, by half-yearly payments, on the —— day of —— and the —— day of —— in every year, during the term of —— years, to be computed from the day of the date of these presents, or within one calendar month next after every of the same respective half-yearly days of payment, he the said A. B., his executors, administrators, or assigns, shall not nor will call in the said sum of £——, nor bring, commence, or prosecute any action, suit, or other process at law or in equity, either for obtaining the possession of the same messuages, lands, and other hereditaments, or for the purpose of foreclosing the equity of redemption thereof, or upon the

(*a*). When these Forms are used, add (if such be the intention) a covenant on the part of the mortgagor not to discharge or redeem mortgage within the period stipulated, unless required by the mortgagees.

covenant hereinbefore contained until the end of the said term of —— years, to be computed as aforesaid; but nevertheless, it is hereby agreed and declared between and by the said parties to these presents, that if at any time during the said term of —— years default shall be made in payment by the said C. D., his heirs, executors, administrators, or assigns, of or in payment of the interest of the said sum of £——, after the rate and within the time and space aforesaid, that then and in such case it shall and may be lawful to and for the said A. B., his executors, administrators, and assigns, to call in and compel payment of the said sum of £——, and the interest thereof, and to bring, commence, and prosecute any action, suit, or other process in respect thereof, or upon any of the covenants, clauses, and agreements hereinbefore contained, as they or he shall think proper or be advised; And it is hereby further agreed and declared, that the said A. B., his executors, administrators, or assigns, shall not be obliged to accept the principal sum of £—— before the expiration of the said term of —— years, unless six calendar months' previous notice in writing be given by the said C. D., his heirs, executors, administrators, or assigns, to the said A. B., his executors, administrators, or assigns, or some or one of them, or left for him or them at his or their usual place or places of abode, of such intention of him the said C. D., his heirs, executors, administrators, or assigns, to pay the same.

That the debt shall remain on the security for a given period under certain restrictions.

XXVI. And it is hereby declared and agreed by and between the said A. B. and C. D. and E. F., and it is the true intent and meaning of them and of these presents, that in case the said E. F. shall not pay the said sum of £—— on the day or time hereinbefore limited for payment thereof in the proviso for redemption hereinbefore contained, the said principal sum of £—— shall remain and be retained on this security for the term of —— years, to be computed from the day of the date of these presents, without any right in the said E. F., his heirs, executors, administrators, or assigns, to redeem the said messuages, &c., or to pay off all or any part of the said sum of £—— during the said term of —— years,

without the consent of the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, and his or their agreement to accept the same, and without any right in the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, to compel or enforce the payment of all or any part of the said sum of £—— during the said term of —— years, (to be computed as aforesaid), unless default shall be made in payment of the interest of the said sum of £——, or some part thereof, by the space of three calendar months next after some half-yearly day of payment of the same interest: but if such default as last mentioned shall be made at any time, (either before or after the day or time limited for payment of the said principal sum), in payment of the interest of all or any part of the said sum of £——, by the space of three calendar months next after any half-yearly day of payment thereof, then and in that case, and notwithstanding any such default shall have been previously made, without any demand thereupon of payment of the said principal sum of £——, and notwithstanding acceptance of the interest of the said sum after any such prior default, and anything hereinbefore contained, it shall or may be lawful to and for the said A. B. and C. D., or the survivor of them, his executors, administrators, or assigns, at his or their option, and if he or they shall think fit, to call in and compel payment of the said sum of £——, and the interest thereof, within the said term of —— years.

That mortgagee shall not sell without giving mortgagor six months' notice.

XXVII. Moreover, that he the said A. B., his heirs and assigns, shall not nor will make sale or dispose of all or any part of the said premises in execution of the trusts and powers aforesaid, without giving to the said C. D., his heirs or assigns, six calendar months' notice in writing of such his or their intention, or leave such notice at the last or most usual place of abode of the said C. D., his heirs or assigns, or with his solicitor or attorney for the time being.

That if mortgagor shall die before the expiration of seven years, then his executor may

XXVIII. Provided also, and it is hereby agreed and declared by and between the said A. B. and C. D., that in case the said A. B. shall depart this life at any time previously to the said —— day of ——, and during the continuance of

on giving six months' notice sell.

the said sum of £——, or any part thereof, upon this security, then and in such case, and notwithstanding any covenants or directions to the contrary thereof hereinbefore contained, it shall and may be lawful to and for the heirs, executors, or administrators of the said A. B., upon giving such notice in writing as is hereinbefore mentioned, to call in and demand payment of the said sum of £——, and interest of such part thereof as shall be then remaining upon the security of these presents, notwithstanding the said —— day of —— shall not then have arrived; and in default of payment thereof at the expiration of the said six calendar months, to exercise all and every or any of such powers and authorities as could or might be exercised by the said A. B., his heirs, executors, administrators, or assigns, in case of any such default being made as is hereinbefore mentioned.

For making annual rests, and providing that the balances shall carry interest. (In mortgages). [*From MS. collection of John Coles, Esq.*]

XXIX. Provided always, and it is hereby declared and agreed, by and between all the parties hereto, that on the —— day of —— next ensuing the day of the date of these presents, and on the same day in every succeeding year, a rest or account in writing shall be made out and stated between the said A. B., his executors, administrators, or assigns, on the one part, and the said C. D., his executors, administrators, or assigns, on the other part, of all sums which shall at any time previous to the making of every such rest or account respectively have been paid or advanced by the said C. D. to or for the use of the said A. B., under or by virtue of these presents or otherwise, and that the total sum which upon every such rest or account so to be made as aforesaid shall appear to be due to the said C. D., his executors, administrators, or assigns, shall carry interest (*a*) at the rate of £5 per cent. per annum, to be computed from the day on

(*a*) Provisions of this kind are objects of great jealousy in courts of equity;—so much so, indeed, that when the object is to convert into principal the interest, as it from time to time becomes due, such an agreement, if entered into at the time when the loan is advanced, will be set aside as oppressive, and tending to usury. When the interest has, in fact, become due, the parties may then agree to convert it into principal, so as to carry interest.—Vide Vol. I. book iii. chap. 2, "Of Mortgages."

which the same rest or annual account shall be made up or taken up, to and until the time of payment or other satisfaction thereof to the said C. D., his executors, administrators, or assigns; and that such interest shall be a charge on the said premises, and that the same premises or any part thereof shall not be redeemed or redeemable, either at law or in equity, until full payment and satisfaction shall be made to the said C. D., his executors, administrators, or assigns, as well as such last-mentioned interest, as of the said sum of £——, and other the sums of money and interest hereby intended to be secured as aforesaid.

That a power of leasing shall cease as against a mortgagee, but shall be a subsisting power in equity as against the owners of the equity of redemption.

N.B. The father was tenant for life, with a power of leasing, and with a general power of appointing to himself and son. (In a mortgage by way of trusts for sale).

XXX. And it is hereby further directed, declared, and agreed, between the parties to these presents, that as between the said A. B. [*tenant for life*] and C. D. [*mortgagee*], their heirs and assigns, no leases to be granted by the said A. B. under the power of leasing contained in the said hereinbefore in part recited indenture of release (*a*), shall bind, affect, or prejudice the said C. D., his heirs or assigns; And moreover, it is hereby declared and agreed, by and between the said A. B. and C. D., that notwithstanding any thing hereinbefore contained, and as between the said A. B. and all persons entitled under the uses of the said indenture of release, by way of remainder after the estate for life of him the said A. B., and who are to have or take the same or the like estates under the trusts hereby declared of such parts of the said manor &c. as shall not be sold, the said A. B. shall in equity, and over the equitable ownership, subject to the said trusts for sale hereinbefore contained, have the same or the like powers of leasing as were limited, given, or reserved to him, in or by the said hereinbefore in part recited indenture of release, bearing date on or about the &c.

Declaration in mortgage by tenant for life,

XXXI. Provided always, and it is hereby further agreed and declared, by and between the parties to these presents,

(*a*) "After default shall have been made in payment of the said sum of £——, and interest, on the day and in the manner hereinbefore appointed and expressed in that behalf."

or in which he concurs to postpone his life estate, that until bill filed or possession taken &c., power of leasing may be exercised.

that these presents and the security hereby made shall not, (during so long time as the said A. B., her executors, administrators, or assigns, shall permit and suffer the said C. D. to continue in the possession or receipt of the rents and profits of the said stable and coach-houses and hereditaments, without bringing an action of ejectment, or filing a bill for sale of the said premises or foreclosure thereof, and without calling in the said principal sum of £——, or any part thereof, by legal notice or demand in writing), hinder, debar, or prevent the said C. D. from leasing or demising the said stable-yard &c., or any part thereof, to any person or persons (*a*) pursuant to the said recited power to him in that behalf reserved, in and by the said hereinbefore in part recited indenture of the &c.; but that every lease so granted by the said C. D., pursuant to the said power, before any such action of ejectment brought, or bill filed for sale or foreclosure, or legal demand made in writing of the said principal sum of £——, or any part thereof, by the said A. B., her executors, administrators, or assigns as aforesaid, shall be as effectual and valid as if these presents had never been made: Provided that the rent or rents reserved, and the benefit of the covenants contained in every such lease, shall be subject and liable to the mortgage and security hereby made, and be considered as included therein in the same manner to all intents and purposes as if such leases had been granted or made before the execution of these presents, any thing herein contained to the contrary thereof in any wise notwithstanding.

That mortgagor may grant leases. [*From MS. collection of John Coles, Esq.*]

XXXII. Provided always, and it is hereby declared and agreed by and between the said parties to these presents, and the said C. D. [*mortgagee*], for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said A. B. [*mortgagor*], his heirs and assigns, that during the subsistence of the said mortgage hereinbefore contained, and notwithstanding failure may be

(*a*) If mortgagor be seised in fee,—
"at rack or improved rents."

made in payment of the said sum of £——, and interest, or any part thereof respectively, on or at the day, time, and place appointed or mentioned in the proviso hereinbefore contained for payment thereof, it shall and may be lawful to and for the said A. B., his heirs and assigns, at any time hereafter and from time to time, (until the said C. D., his executors, administrators, or assigns, shall, by ejectment or other action or proceeding at law or in equity, recover or seek to recover the possession of the said hereditaments and premises, or by bill or other suit or proceeding in equity foreclose or seek to foreclose the equity of redemption of the said mortgaged premises), by indenture or indentures under the hand and seal or hands and seals of the said A. B., his heirs or assigns, to demise, lease, or grant all or any of the said lands, hereditaments, and premises which have been usually letten to rent unto any fit and proper person or persons who may be willing to take the same for any term or number of years not exceeding twenty-one years; so as the lease or leases which shall be so granted be made to take effect in possession, and not in reversion or by way of future interest; and so that in all and every of the said leases there be reserved and made payable, half-yearly or oftener, during the continuance of the term thereby respectively to be granted, the best and most improved yearly rent or rents, to be incident to the immediate reversion of the said premises, that can be reasonably had or obtained for the same, without taking any sum or sums of money, or other thing by way of fine, premium, or foregift, for granting the same; and so as the lessees to whom the same shall be respectively granted do respectively enter into all usual and proper covenants to pay the rent thereby to be respectively reserved, to repair the said messuages, erections, and buildings, and manure and manage the pasture or meadow lands so to be demised, according to the usual course of husbandry in the neighbourhood, and to quit and surrender up the said premises at the end of the term or terms in or by such lease respectively to be granted; and so as in every of the said leases there be contained conditions of re-entry on nonpayment of the rent or nonperformance of the covenants therein respectively to be reserved and contained, and an express

exception and reservation of all timber and trees likely to become timber, and a clause or clauses whereby the lessee or lessees respectively shall be prohibited from committing waste, and all other usual and proper covenants and agreements by and on the part of the said lessee or lessees respectively. And the said C. D., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said A. B., his heirs and assigns, that he the said C. D., his executors, administrators, and assigns, shall and will from time to time, at the request, cost, and charges of the said A. B., his heirs or assigns, become a party to, and seal and deliver, or otherwise allow, ratify, and confirm all and every the lease and leases which shall be granted in conformity to the true intent and meaning of the last-mentioned proviso or agreement, and the terms and restrictions therein mentioned or referred to: Provided always, that the effect or operation of such allowance, ratification, or confirmation of any such lease or leases shall not be in anywise to defeat or prejudice the right of the said C. D., his heirs, executors, administrators, or assigns, to enter into and recover and retain possession of the said mortgaged premises by virtue of these presents, and the mortgage hereby made or intended to be made subject only to such lease or leases as shall be so granted as aforesaid.

To insure the life of surviving mortgagor.

XXXIII. And lastly, it is hereby further provided, declared, and agreed, by and between the parties to these presents, that in case either of them the said A. B. and C. D. shall happen to depart this life during the continuance of the said sum of £——, or any part thereof, on this present security, then and in that case, or at any time afterwards, and from time to time during the continuance of the said sum of £——, or any part thereof, on this present security, it shall or may be lawful to and for the said E. F., his executors, administrators, or assigns, at the costs and charges of the said trust estate, to insure and keep insured in his or their name or names, in any one of the public insurance offices in the city of London or the city of Westminster, the sum of £——, to be paid on the death of the survivor of them the said A. B. and C. D.; and that all and every sum

and sums of money which shall become due and payable to the said E. F., his executors, administrators, or assigns, upon, under, or by virtue of any such insurance or insurances as aforesaid, shall be held upon, for, under, and subject to the same trusts, ends, intents, and purposes as are hereinbefore expressed and declared of and concerning the money to arise or be produced by or from the sale or sales to be made pursuant to the trusts hereinbefore contained.

To insure buildings in mortgage. (Short form).

XXXIV. And it is hereby further understood and agreed, that in case the said buildings shall at any time hereafter not be insured, or insured in any less sum than £——, it shall or may be lawful to and for the said A. B., his executors, administrators, or assigns, to insure the same in the sum of £——; and, if he, she, or they shall think fit, to renew such insurance from time to time; and that the said piece or parcel of ground, &c. hereby assigned, or otherwise assured or intended so to be, shall not be redeemed or redeemable until the premiums which shall be paid for such insurance, and interest thereon, at the rate of £5 per cent. per annum, shall have been fully paid or satisfied; and that the money (if any) which shall become due or payable under or by virtue of any such insurance or insurances shall be applied, in the first place, in discharging the principal money, and premiums of insurance, and interest thereon, which shall be due under or by virtue of these presents; and that the surplus, if any, thereof shall belong and be payable and paid to the said C. D., his executors, administrators, or assigns.

That the money is advanced by two mortgagees jointly on a joint account (a).

XXXV. And the said A. B. and C. D. hereby declare, that the said sum of £—— is advanced by them out of money belonging to them jointly, on a joint account; and also direct and appoint, that in the event of the death of either of them in the lifetime of the other of them, and

(a) This clause is used when the mortgagees advance the money from a trust estate. Persons who advance money jointly on a security are, in the presumption of a court of equity, tenants in common of the money, or entitled to it in aliquot parts. That presumption, as often as it is incongruous with the fact, should be rebutted.

during the continuance of the said sum of £——, or any part thereof, or the interest thereof, or of any part thereof on this present security, the same sum of £——, and the interest thereof, or such part of the same as from time to time shall remain unpaid, shall belong and be payable and paid to the survivor of them the said A. B. and C. D., his executors, administrators, or assigns, in exclusion of the executors or administrators of such one of them the said A. B. and C. D. as shall first depart this life, any law or usage to the contrary notwithstanding.

That the money advanced on a security belongs to two persons as partners jointly, and shall be payable to the survivor of them, &c.

XXXVI. And the said A. B. and C. D. do hereby severally declare, that the said sum of £—— is advanced by them out of money belonging to them on their partnership account as bankers; and do hereby direct and appoint, that in case either of them shall die in the lifetime of the other of them, and during the continuance of the said sum of £——, or any part thereof, on this present security, the whole of the principal money and interest then due and owing on this security shall belong and be paid to the survivor of them the said A. B. and C. D., his executors, administrators, or assigns (*a*), any law or usage to the contrary notwithstanding.

Another form.

XXXVII. And the said A. B., C. D., and E. F. hereby declare, that the said sum of £—— is part of their partnership effects; and that notwithstanding the death of any one or more of them, the same sum and the interest thereof shall be payable and paid to the survivors or survivor of them, without any contribution by or on the part of the executors or administrators of such one or more of them as shall have departed this life.

(*a*) "As part of the partnership effects of the said A. B. and C. D., without the consent, privity, or concurrence of the executors, administrators, or assigns of such one of them the said A. B. and C. D. as shall have first departed this life."

That money vested in trustees for the separate use of a married woman was lent on mortgage by her direction.

XXXVIII. And it is hereby declared and agreed by and between the said parties to these presents, and the said A. B. doth hereby acknowledge and expressly declare, that the said sum of £—— was advanced on the security of the said recited mortgage, and of a bond bearing even date with the said indenture of release, and recited in that indenture, at her request, and by her direction and appointment; and she the said A. B. doth by these presents, by virtue of every power enabling her in this behalf, appoint that the said sum of £——, so secured as aforesaid, shall be and be considered an indemnity to the said C. D. and E. F., their heirs, executors, and administrators, for having advanced and lent the said sum of £—— on the security of the said mortgage and bond; And it is hereby declared and agreed by and between all the said parties to these presents, that the said sum of £——, and the interest to become due and payable in respect thereof, and also the recited mortgage, and the said bond, bearing even date with the said indenture of release, shall be held upon the trusts declared by the said in part recited bond, bearing date on or about the &c., of and concerning the said sum of £—— therein mentioned, and the interest to become due and payable in respect of that sum.

Vide Tit. VII. art. ii.

That neither of two mortgagees shall have priority over the other.

XXXIX. And lastly, it is hereby declared and agreed by and between the said A. B. and C. D., and it is the true intent and meaning of them and of these presents, that the said several sums of £—— and £—— advanced by the said A. B. and C. D. respectively, and the interest of the same sums respectively, shall be payable and paid to them respectively, or to their respective executors, administrators, or assigns, without any priority or preference of either of them, his executors, administrators, or assigns, to the other of them, his executors, administrators, or assigns.

That personal estate shall be the primary fund for the payment of mortgage money in exoneration of mortgaged premises

XL. And the said A. B. and C. D. hereby declare, that as between their heirs and devisees, and their executors and administrators, the said sum of £—— shall be considered as the personal debt of the said A. B. and C. D., and that their personal estate shall be the primary fund for the payment of that sum and the interest thereof, in exoneration of the said

and heirs or devisees.

mortgaged premises, and also of their heirs and devisees, without any contribution by or on the part of their heirs or devisees in respect of such part of the said mortgaged premises as are, or are of the nature of freehold estates, or of estates of freehold and inheritance, any law or usage to the contrary notwithstanding.

Another form.

XLI. And the said A. B. doth hereby declare and direct, that as between his heirs or devisees on the one part, and his executors or administrators on the other part, the said sum of £—— remaining due to the said C. D. as aforesaid, and hereby secured to him, or intended so to be, shall be and be considered as the personal debt of him the said A. B.; so that the heirs or devisees of the said C. D. may, as against his executors or administrators, be entitled to have the said principal sum of £——, and the interest thereof, paid and discharged by and out of the personal estate of him the said A. B., any law or usage to the contrary notwithstanding.

That lands shall be the primary fund for payment of mortgage debts.

XLII. And lastly, it is hereby declared and agreed by and between the said A. B. and C. his wife, and they do hereby severally direct and appoint, that as between themselves and all persons claiming under them the said messuage &c. hereby granted and released or otherwise assured or intended so to be, shall in equity be deemed the fund primarily charged with, and liable to the payment of the said sum of £—— now advanced by the said E. F. as well as the said several sums of £—— and £—— due to the said G. H. as the personal representative of the said I. K. as aforesaid; and that the covenant of the said A. B. hereinbefore contained for the payment of the said sum of £—— shall in equity be deemed only as an additional and collateral security for the payment of the same sum.

That lands shall be the primary fund for payment of mortgage debt.

N. B. This form is applicable to a mortgage made un-

XLIII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that as to and between and against the said A. B. [*tenant for life*], his heirs, executors, and administrators, of the one part, and the person or persons who for the time being shall be beneficially entitled to the said messuages, &c. hereby as-

signed or otherwise assured, or intended so to be, subject to the said term of five hundred years, of the other part, the said sum of £—— and the interest thereof shall not be considered as the personal debt of him the said A. B.; and that on the contrary thereof, the said messuages &c. hereby assigned or otherwise assured, or intended so to be, shall be and be considered as the fund primarily liable to the payment and discharge of the said sum of £—— and the interest thereof, subject and without prejudice to the right of the said C. D. [*mortgagee*], his executors, administrators, and assigns, of availing himself and themselves of the covenant of the said A. B., as a collateral and concurrent security for enabling him the said A. B., his executors, administrators, and assigns, to enforce the payment of the said sum of £—— and the interest thereof.

der a power to the tenant for life to charge, and to limit a term for raising the money.

XLIV. And it is my will and I do hereby direct, that as between my real and personal estates, my said real estates shall be the primary fund for the payment of all mortgage debts and the interest thereof which shall be charged thereon at the time of my decease, and so as to impose upon the said A. B. [*tenant for life*], the obligation of keeping down the interest of the same mortgage debts (if any) during her life, without any right to have the said real estates exonerated from such mortgage debts or the interest thereof, by and out of my said personal estate.

That testator's real estates shall be the primary fund for payment of the mortgage debts and interest.

XLV. And further, that the said messuage &c. shall be and be considered as the primary fund for the payment and discharge of the said annuity or yearly rent of £——, any law or usage to the contrary notwithstanding.

That lands shall be the primary fund for payment of an annuity.

XLVI. And it is my will, and I do hereby declare it so to be, that the legacy which is hereinbefore by me given to the said A. B. shall not be paid or be payable out of my personal estate, but out of my real estate only; which I do hereby charge with the payment of the same.

To exempt personal estate from the payment of legacies, and charging the real estate therewith.

XLVII. Provided always, and it is hereby expressly declared and agreed by and between the several parties to

For reduction of annuity when there

shall be peace between England and the other European powers. (To be used during time of war). Vide Tit. V. art. xi. p. 139.

these presents, as far as they are respectively interested, and it is the true intent and meaning of them and of these presents, that during such time, and when and as often as there shall be peace between England and all the other powers in Europe, the said A. B. shall from and after the expiration of six calendar months from every such peace, and during the continuance of the same, accept and take one annual sum or yearly rent-charge of £—— of such lawful money aforesaid, in lieu and full satisfaction of the said annual sum or yearly rent-charge of £—— hereby provided for her, and that each quarterly payment shall be reduced accordingly, when and as often as such peace shall be subsisting on any quarterly day of payment of the said rent-charge. Provided also, and it is hereby further declared and agreed, that when and as soon as all the lives upon which the said leasehold messuages, lands, hereditaments, and premises described in the fourth schedule to these presents shall have dropped, then and from thenceforth one-tenth part shall be deducted and taken from and out of the said annual sum or yearly rent-charge of £—— or £——, as the case may require; and thenceforth the said A. B. shall accept and take the said annual sum or yearly rent-charge so reduced, in lieu and full satisfaction of the said annual sum or yearly rent-charge of £——, hereby charged for or made payable to her as aforesaid.

For the reduction and apportionment of rent payable for vats, &c. in case any of them shall become unserviceable.

XLVIII. Provided also, and it is hereby further declared and agreed by and between the parties to these presents, and the said A. B. doth hereby declare and consent that, inasmuch as the rent of £—— is to be paid in respect and on account of the stone vats or cisterns lately erected and set up in, &c. the said sum of £—— shall be payable and paid only so long as the same vats or cisterns shall continue serviceable; and that in case one of them only shall remain serviceable, then £—— a year, part of the said yearly rent of £——, shall thenceforth cease to be payable or paid, and the said yearly rent of £—— shall thenceforth be reduced to £—— a year; and that if both or either of the said vats or cisterns shall prove serviceable only in part, then the said rent of £—— shall be apportioned at such sum as

shall be agreed on by the said A. B., his executors, administrators, and assigns, and by the partners for the time being, or the residue of them; and that in case any difference shall arise between the parties by reason that the said A. B., his executors, administrators, or assigns, shall contend, that both or either of the said vats or cisterns is or are serviceable in the whole or in part, and that no allowance or deduction is to be made from or out of the said rent of £——, then the apportionment, or, as the case shall require, the cesser of the said rent of £——, shall be referred to some two persons, of whom one shall be named by the said A. B., his executors, administrators, or assigns, and the other by the partner or partners for the time being, or the residue of them; with full power to such two referees to name and appoint a third person to act jointly with them; and that every award or determination which shall be made by such three persons, or any two of them, concerning the apportionment or cesser of the said rent, shall be binding and conclusive on all the parties to these presents, anything hereinbefore contained to the contrary notwithstanding.

XLIX. Provided always, and it is hereby declared and agreed by and between the said parties hereto, that in case the said messuage or tenement and premises hereby demised, or any part thereof, shall, at any time or times during the said term hereby granted, happen to be consumed, destroyed, or damaged by fire, storm, or tempest, so as to render the same uninhabitable or untenantable, then and in such case the rent hereinbefore reserved for the same (or a just and proportionable part thereof, according to the nature and extent of the injury which the said premises may have sustained), shall be suspended or abated, and all remedies for recovering the same, until the same premises shall have been rebuilt or repaired by the said A. B., his heirs or assigns, and be in a fit state and condition for habitation; and in case of any dispute or difference of opinion between the said parties, with respect to the duration of such suspension, or the amount of such abatement respectively, or of both, the same shall from time to time be referred to the arbitrament and determination of three indifferent persons, to be named and

chosen in the usual manner of arbitrations; and the decision of the said three arbitrators, or any two of them agreeing in their award, shall be final and conclusive upon the said parties hereto, and all persons claiming through or under them respectively.

That if messuage be burnt down or damaged by fire, tenant shall have the option, on fourteen days' notice after fire, to cease term on next rent day; and if insurance kept on foot, and all arrears of rent paid up, insurance money and materials to belong to lessors, and term to cease; but if lessee elect to continue tenant, and reinstates building to satisfaction, remaining materials and insurance money to become his property.

L. Provided always nevertheless, and it is hereby agreed by and between the said parties to these presents, that if the said demised messuage or tenement and premises, or any part thereof, or any messuage or tenement and erections built or to be built on the said demised piece or parcel of ground and premises, or any part thereof, shall at any time or times during the said term hereby granted be burnt down, demolished, or damnified by or by means of fire, then and in that case the said A. B., his executors, administrators, or assigns, shall have the option, at any time within fourteen days after such fire, of giving notice that the term hereby granted shall cease and determine on the next rent day after such fire; and in that case, and from that time, provided an insurance shall have been made and kept on foot, pursuant to the covenant hereinbefore contained, and provided all arrears of rent shall be paid up to that day, the said term shall cease and determine; and the said A. B., his executors, administrators, or assigns, shall be discharged of and from any further payment of the rent hereby reserved, or performance of the covenants, conditions, and agreements hereinbefore contained; and in that case also, the money which shall become payable by virtue of any such insurance, and the remaining materials of the buildings, shall become and be the absolute property of the said company, their successors or assigns; or the said A. B., his executors, administrators, or assigns, shall have the liberty of continuing the tenant or tenants under the term hereby granted; and in that case, if he or they shall reinstate the buildings so damaged or destroyed by fire, to the satisfaction of the surveyor for the time being of the said company, their successors or assigns, and within —— after such fire, then and in that case the remaining materials of the buildings shall become the property of the said A. B., his executors, administrators, or assigns; and as soon as the loss or damage by fire shall

be reinstated, the sum to be received on or for such insurance shall be paid to him or them.

LI. And it is hereby declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them, and of these presents, that the reserved rents, customary fines of renewal, and incidental expenses which at any time or times, and from time to time, shall become due and payable, or shall be agreed to be paid, for or in respect of the said lands and hereditaments hereby assigned or otherwise assured, or intended so to be, shall be contributed, borne, and paid in the manner, and in the proportions, and by the persons and their respective executors, administrators, and assigns, hereinafter mentioned; (that is to say), —— parts (the whole in —— equal parts to be divided) of the said rents, customary dues, fines of renewal, and incidental expenses, by the said A. B., his executors, administrators, or assigns, for or in respect of those parts of the said lands and hereditaments which are to be held in trust for the said A. B., his executors, administrators, and assigns as aforesaid; and the remaining —— parts of the same rents, customary dues, fines of renewal, and incidental expenses by the said C. D., his executors, administrators, or assigns, for or in respect of so much and such parts of the same lands and hereditaments as are mentioned or specified in the schedule thereof hereunder written or hereunto annexed.

LII. And the said A. B., and at his instance, and with his consent and approbation, the said C. D. and E. F., as far as they lawfully may or can, hereby consent and agree, and also direct and appoint that the sum of £—— a year, part of the said yearly rent or sum of £——, (subject to a proportional part of the deductions to be made out of the said rent of £—— a year), shall henceforth, during the continuance of the now residue and remainder of the term of the said G. H. [*lessee*] in part of the said lands and hereditaments hereby released and covenanted to be surrendered or otherwise assured, or intended so to be, be payable and paid to the said A. B., his heirs and assigns, as his and their

proportion of the said rent or sum of £——, for or in respect of so many and such parts of the lands and hereditaments, out of which the same rent is reserved, as are hereby released and covenanted to be surrendered or otherwise assured, or intended so to be (*a*).

Of apportionment of sums to be raised out of two estates conveyed; power to pay and compound debts &c.; proviso not to subject premises with any lien in respect of the particular debts.

LIII. Provided always, and it is hereby agreed and declared between and by the parties to these presents, that as between the estates comprised in the first schedule to these presents, and the estates comprised in the second schedule to these presents, and the persons entitled thereto under the limitations hereinbefore contained, and their respective heirs, executors, administrators, and assigns, and all other persons whomsoever claiming under them or any of them, the hereditaments comprised in the said first schedule shall be charged with and liable to the raising the sum of £—— only of the said sum of £——, so proposed to be raised as hereinbefore is mentioned; and that the hereditaments comprised in the said second schedule shall be charged with and liable to the raising of £——, the remaining part of the said sum of £——; but that the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, may nevertheless raise the whole of the said sum of £——

(*a*) On conveyance *to* a tenant,—

"except, &c. [*the lands*]; and also the rent or sum of £—— a year, parcel of the said rent of £—— during the continuance of the lease of the said G. H. in the said messuage, &c. called A. [*the excepted parcels*], as and for that part or apportionment of the said rent of £——, which is to be paid for or in respect of the said messuage, &c. called A."

And in the conveyance of the excepted parcels to another purchaser, say,—

"All, &c. [*the parcels*]; and also the rent or sum of £—— a year, parcel of the rent or sum of £——, now payable by the said G. H. for the whole of the said messuage, &c. as and for the apportionment of the said rent to be paid for or in respect of the said messuage, &c. called A., during the continuance of the estate of the said G. H. therein."

and the interest thereof, by mortgage or sale of all or any part of both or either of the said hereditaments; but if the said A. B. and C. D., or the survivor of them, or the heirs or assigns of such survivor, shall raise from either of the said estates, or any part of the other of the said estates, a greater or larger sum than that proportion of the said sum of £—— with or to which that estate is hereinbefore directed to be charged or made liable to, then and in that case the same shall be reprized or made good out of the other of the said estates; and the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, shall convey and assure the said other of the said estates to such uses or upon such trusts, or in such other manner as will effectually make the same a security for the money to be reprized and made good out of the same as hereinbefore is mentioned. Provided always, and it is hereby expressly agreed and declared between and by the parties to these presents, that no person purchasing or advancing money on the security of the said estates, or either of them, or any part thereof respectively, shall be in any wise impeached by the agreement or declaration hereinbefore expressed or contained for apportioning the money charged upon or to be raised out of or from the said estates. And it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, to pay the debts, the payment of which is intended to be hereby provided for, in such order and course of payment as they or he shall think proper; and if any of the said debts shall appear to him or them unjustly or improperly claimed from the said E. F. and G. H., to delay or refuse, or utterly to reject the same, and to adjust, settle, compromise, and compound any of the said debts for such sum or sums of money, and in such manner as to them or him shall seem proper. Provided always, and it is hereby expressly agreed and declared between and by the parties to these presents, that nothing in these presents contained shall in anywise make, subject, charge, or incumber the same hereditaments and premises hereby respectively granted, released, and confirmed to or with any debt or debts, the payment of which is in-

tended to be hereby provided for, or to give the persons to whom the same are or shall be due, any action or suit, or cause of action or suit, or any lien, charge, claim, or demand whatsoever, at law or in equity, on account of any such debt upon the said hereditaments and premises, or the money to arise from the sale or mortgage thereof; and that if any such action, claim, or demand shall be made, this present indenture shall and may be pleaded, and shall and may be adjudged, deemed, and taken to be an absolute bar thereto.

That a given proportion of a possible and contingent charge shall be contributed by the purchaser of part of the lands liable to the charge.

LIV. And it is hereby declared and agreed by and between the parties to these presents, that in case there shall be any daughter or daughters of the marriage of the said A. B. and C. D., and any sum or sums of money shall, under and by virtue of the power hereinbefore recited or referred to, be raised for the portion or portions of the same daughter or daughters, then and in these cases the said E. F., his heirs or assigns, shall, for or in respect of the messuages &c. hereby released or otherwise assured, or intended so to be, contribute, bear, and pay a proportion, and only a proportion, of the sum or sums of money which shall be raised for portions under and by virtue of the said recited power; and that one ——th part of the sum or sums of money to be raised as aforesaid, and no more, shall be and be considered as the proportion of the said E. F., his heirs or assigns, notwithstanding a greater or smaller proportion thereof shall, by the person or persons exercising the said power, be charged on the messuages &c. hereby released or otherwise assured, or intended so to be; and that the said A. B., his heirs or heirs male of his body, or assigns, shall bear and pay the residue of the said sum or sums of money for or in respect of the residue of the lands comprised in and settled by the said hereinbefore in part recited indentures of lease and release, any appointment, agreement, law, or usage to the contrary notwithstanding.

That residue of lands in lease shall be subject to the entire rent.

LV. And lastly, it is hereby declared and agreed by and between the said parties to these presents, as far as they respectively are interested, and the said A. B. doth by these

presents, for himself, his heirs, executors, administrators, and assigns, grant, covenant, and declare to and with the said C. D. and E. F., their heirs and assigns, according to their respective estates and interests in the premises, that the residue of the said messuage and premises comprised in the said indenture of lease and thereby demised, exclusive of the piece or parcel of land and hereditaments hereby bargained and sold or otherwise assured, or intended so to be, shall be and be deemed chargeable with the full amount of the rent reserved by the same lease, without any apportionment or diminution of the same rent for or by reason of the assignment hereinbefore contained; and that the same messuages and hereditaments, with the exception, and exclusively, of the piece or parcel of land and hereditaments hereby bargained and sold, or intended so to be, shall be liable and charged with a distress or distresses for the same rent in the same manner as if these presents had not been executed, or as if the piece or parcel of land and hereditaments hereby bargained and sold or otherwise assured, or intended so to be, had not been comprised in the said indenture of lease, any thing hereinbefore contained, or any law or usage to the contrary in anywise notwithstanding.

LVI. And the said A. B., by way of agreement and not of release, doth hereby grant and agree to and with the said C. D., his heirs and assigns, and the said E. F. and G. H. do hereby severally consent, direct, and appoint that the said rent of £—— a year shall henceforth be answered and paid out of the residue of the hereditaments charged with the same, exclusively and by way of exoneration of the close of land and hereditaments hereby released or otherwise assured, or intended so to be (*a*).

LVII. Provided always, and it is hereby agreed and declared by and between the said parties to these presents, that if the said A. B., his executors, administrators, or assigns, should be desirous to quit or give up the said hereby

(*a*) Vide Mr. Butler's opinion, before quoted, pp. 47—49.

demised premises at the end of the first seven or fourteen years of the said term of twenty-one years hereby granted, and of such his or their desire shall give six calendar months' notice in writing to the said C. D., his executors, administrators, or assigns, next preceding the expiration of the said first seven or fourteen years (as the case may be), then and in such case (all arrears of rent being duly paid, and the said messuage or tenement, and all other the premises hereby demised, being in such repair as hereinbefore is required) this present lease, and every clause, matter, and thing herein contained, shall, at the expiration of the first seven or fourteen years of the said term hereby granted (as the case may be), determine, cease, and be utterly void to all intents and purposes, as if the same had expired by effluxion of time, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

For determining lease in case of rent being in arrear, or of the lessee's assigning or underletting without consent, or failing to observe covenants.

LVIII. Provided always nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of £—— hereinbefore reserved, or any payment or payments thereof, shall be in arrear by the space of twenty-one days next after the same ought to have been paid as aforesaid, or if the said A. B., his executors, administrators, and assigns, shall, at any time or times during the continuance of this demise, transfer or assign over or underlet the premises hereinbefore demised to any person or persons whomsoever, for all or any part of the said term of twenty-one years, without the license or consent in writing of the said C. D., his heirs or assigns, for that purpose first had and obtained (*a*); or if the said A. B., his executors, admi-

(*a*) With reference to this provision, it is important to bear in mind, that if there be a condition for re-entry on alienation without licence from the lessor, and a licence is once granted, even though it be given to one only of the lessees, or limited to a particular alienee, or confined to a part only of the estate demised; yet this for ever discharges the condition. *Brummell* v. *Macpherson*, 14 Ves. 173, and the cases cited in Recital-Book, tit. Lease, art. 348, note. Besides, according to the common law, a condition is so entire in its nature that it cannot be apportioned; and hence a dispensation with *any*, is a dispensation with *every*, branch of it. *Dumpor's case*, 4 Rep. 119; Smith's Leading Cases, i. 15, which con-

nistrators, or assigns, shall become a bankrupt or bankrupts, or take advantage or attempt to take advantage of the now

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tains an excellent commentary on this case. Strange to say, the principle in question is held to be applicable even where the condition is in fact complied with, as upon alienation with licence, according to the terms of the condition. Such a principle, thus applied, does indeed "savour of great refinement," (as Mr. Preston observes); for it assumes, that a compliance with the condition nullifies it.

If it be thought advisable to revive the condition, this may be done—where the lease is for a term of years—by a defeasance. At one time, indeed, it was supposed, that if the licence contained a restriction that the assignee should hold subject to the covenants and conditions in the original lease (according to the following form), this would preserve the condition, so as to guard against future assignments; but such a view is contrary to *Brummell* v. *Macpherson*, above cited, and to the opinion, if not the practice, of the profession. Prest. Conv. ii. 198. I have retained the clause in the ensuing licence, chiefly for the sake of illustration.

Form of lessor's licence to assign. [*From MS. collection of John Coles, Esq.*]

"I A. B. of &c. do by this writing under my hand and seal signify my licence and consent for C. D. of &c. to assign to E. F. of &c. all [*parcels from the lease*] and all and singular other the premises demised in and by a certain indenture of lease, bearing date the —— day of ——, 18—, and made between &c. [*if it has been assigned, add* 'and since assigned to the said C. D.'], together with the said indenture of lease, for all or any part of the residue of the term of twenty-one years, by the same indenture of lease granted, now to come and unexpired, under and subject to the payment of the yearly rent of £——, thereby reserved, and to the observance and performance of the several covenants, provisoes, and agreements therein contained, on the tenant's or lessee's part to be performed, fulfilled, and kept. Provided always nevertheless, that this licence and consent shall not extend, or be construed to extend, to authorize or permit the said E. F., his executors or administrators, or any of them, to assign the said messuage or tenements and premises, or any part thereof, or the said indenture of lease, or his or their estate or interest therein, for all or any part of the said term thereby granted, to any person or persons whomsoever; but, on the contrary, to restrain him and them therefrom without the further licence and consent of me the said A. B., my

existing or any future act or acts of parliament for the relief of insolvent debtors, or shall compound his debts, or assign over his estate and effects for payment thereof, or any execution shall issue against him or his effects, whereupon the said premises or any part thereof shall be taken or attempted to be taken in execution (*a*); or if the said A. B., his executors, administrators, or assigns, shall not at all times, during the continuance of this demise, well and truly observe, perform, fulfil, and keep all and singular the covenants, conditions, and agreements which on his and their parts are or ought to be performed, fulfilled, and kept, according to the true intent and meaning of these presents, then and in every or any such case, and at all times hereafter, and although no advantage shall have been taken of any previous default, it shall and may be lawful to and for the said C. D., and his heirs or assigns, into the said premises hereinbefore demised,

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heirs or assigns, for that purpose first had and obtained. In witness" &c.

(*a*) Or,—

1. "If the said A. B., his executors or administrators, shall at any time during the continuance of this demise commit any act of bankruptcy within the intent and meaning of any of the statutes made or to be made in relation to bankrupts, whereon a fiat shall issue, and he or they shall be found or declared to be a bankrupt or bankrupts, or if he or they shall make any composition with his or their creditors for the payment of his or their debts, or if he or they shall make any assignment of his or their effects, in trust for the benefit of his or their creditors; or if the said A. B., his executors or administrators, shall at any time during the term demised, by losses or otherwise, become insolvent, and any writ or writs of execution or other process of law shall issue against his or their goods and chattels, that then" &c.

2. "Or if the said premises, or any part thereof, shall through the act or default of the said A. B., his executors or administrators, become saleable, assignable, or vested in any other person or persons, by virtue of any writ, common process, or proceedings at law or in equity, then" &c.

or into any part thereof in the name of the whole, wholly to re-enter, and the same to have again, re-possess, and enjoy, as in his or their former estate, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

That the deed should be void, unless executed by all parties within two years. (In a partition deed between numerous parties, some of whom were abroad, and their concurrence uncertain).

LIX. Provided always, and it is hereby declared and agreed, and these presents are upon this express condition, that these presents, and the lease for a year hereinbefore recited and referred to, and every matter and thing herein contained, shall be null and void unless the same shall be duly executed by all the parties hereto, being grantors or releasors, within two years from the date hereof. Provided always, that a certificate, inclosed or written in the margin of these presents, and signed by any notary public, certifying that the same were produced to him on any day within the said period of two years from the date hereof, executed or appearing to be executed by all the said parties hereto, being grantors or releasors, shall, for all the purposes of these presents, be conclusive evidence of the same having been so executed within such period as aforesaid, and shall operate as a release or extinguishment of the condition hereinbefore contained.

That until grantor shall suffer annuities to be in arrear, he may, with consent of annuitant, exercise powers of leasing.

LX. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that notwithstanding any thing hereinbefore contained, the said A. B., in the meantime, till he shall suffer the said annuities, some or one of them, or the said interest, to be in arrear as aforesaid, shall, with the consent in writing of the said C. D. during his life, and after his death then in the discretion of him the said A. B. alone, exercise any power or powers of leasing which he had over the premises immediately before the execution of these presents; and that all leases to be made under and by virtue of the same power or powers shall take effect in possession, in preference to the demise hereby made; but the rent or rents to be reserved on the same lease or leases shall be incident to the term hereby granted.

For preserving the benefit of a judgment,

LXI. And it is hereby agreed and declared between and by the said parties to these presents, that the judgment so

without the necessity of a scire facias. (In annuity deeds).

to be entered up against the said A. B. as aforesaid, is intended and agreed to be a further security to the said C. D., his executors, administrators, and assigns, for the said annuity, yearly rent, or sum of £—— hereinbefore mentioned; and that no execution or executions shall be issued or taken out upon the said judgment, unless and until the said annuity, yearly rent, or sum of £—— shall be in arrear by the space of forty-five days next after the same shall become due and payable; and that in case, and when, and so often as the said annuity, yearly rent, or sum of £——, or any part thereof, shall be in arrear or unpaid by the space of —— days next after any of the said days or times whereon the same ought to be paid as aforesaid, then and in such case, and so often as the same shall happen, it shall and may be lawful to and for the said C. D., his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment by which the said annuity so in arrear shall be secured, as he or they shall think fit, for the recovery of the arrears of the said annuity, yearly rent, or sum, and all costs, charges, and expenses (if any), which he the said C. D., his executors, administrators, and assigns, or any of them, shall bear, sustain, or be put unto for or by reason of the nonpayment thereof. And it is hereby agreed and declared that the said C. D., his executors, administrators, and assigns, shall, by, with, and out of the money to be raised by the ways and means lastly hereinbefore mentioned, pay, satisfy, and discharge the said annuity, yearly rent, or sum of £——, or such part thereof as shall so be in arrear, and all costs, charges, and expenses (if any) to be occasioned by the nonpayment thereof, and shall pay the residue and surplus (if any) of the money so to be raised to the said A. B., his executors, administrators, and assigns, for his and their proper use and benefit. And it is hereby further agreed and declared between and by the said parties to these presents, that it shall not be necessary for the said C. D., his executors, administrators, or assigns, to revive or cause to be revived the said judgment, or do any act, matter, or thing to keep the same on foot, notwithstanding the same judgment shall have been entered of record for the space of

one year or upwards (*a*); nor shall it be necessary for him or them to issue out any writ or writs of scire facias to assess

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(*a*) According to Mr. Serjeant Williams, it is an established rule of practice, that if a plaintiff has judgment with a cesset executio, or stay of execution for a year, he may after that period take out execution without a scire facias, because the delay is by *consent of the parties*, and in favour of the defendant. 2 Wms. Saund. 72 c, note (4). In *Hiscocks* v. *Kemp*, 3 Adol. & Ell. 676, this rule was called in question, partly on the ground that it was contrary to the express provisions of the statute of Westminster 2, (13 Ed. 1, stat. 1, c. 45), and partly that the practice rested on no sufficient authority. As to the first objection, the Court considered it to arise from a mistaken interpretation of the act, observing that the scire facias in personal actions was given by that statute rather in aid of plaintiffs than in restraint of them. "At the common law," (continued the Court, per Lord Denman, C. J.), "a presumption arose, from a plaintiff's delay beyond a year, that his judgment either had been satisfied, or from some supervening cause ought not to be allowed to have its effect in execution. After such delay, therefore, he was not allowed to issue execution as a matter of course, but was driven to bring a new action on the judgment. The scire facias, which had been used at the common law for the purpose of executing judgments in real actions after a year and day's delay, was therefore adopted by the statute as a less expensive and dilatory course for the plaintiff, and as equally affording protection to the defendant, if he had any reason to shew why the execution should not issue. It is not then in contravention of the statute, to hold that a scire facias, given in lieu of the action on the judgment, is not necessary where such action would not have been so; and what arguments could a defendant have used to induce the setting aside an execution, on the ground of delay, and the legal presumptions consequent thereon, when such delay was shewn to have originated, and the presumptions therefore to fall to the ground, by his own act?"

As to the observation that the practice rested not on sufficient authority, it was answered, "the truth is, as it often happens in points of practice, that the written authority for it is not so much to be found in any one or more express decisions, as to be collected from the analogies of other decided points within the same principle, and from the undisputed dicta of counsel or judges, scattered through the books." 3 Adol. & Ell. 682. Until, indeed, the practice is *doubted*, it often remains undecided by the Courts; and when once judicially decided, it ceases to be a rule of practice merely, and becomes a rule of law. The rule in question, as laid down by Mr. Serjeant Williams, being in accordance with the practice of the Courts, long considered as established, not inequitable or inconvenient in itself, nor at variance with any legal principle, statute, or decided authority, the Court accordingly decided in favour of it. *Hiscocks* v. *Kemp*, 3 Adol. & Ell. 676; and see *Powis* v. *Powis*, 6 B. Moore, 517.

damages; and that the said A. B., his heirs, executors, or administrators, shall not nor will have or take, or attempt, by any ways or means whatsoever, to have or take any advantage of the want of reviving or keeping the said judgment on foot, nor of the want of issuing out any writ or writs of scire facias as aforesaid; and that if he or they shall attempt so to do by action or other legal proceeding or proceedings whatsoever, this present agreement shall and may be pleaded and shewn in bar thereto, any rule or practice of the courts, or any of them, to the contrary thereof in anywise notwithstanding. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that after the decease of the said A. B., and full payment to the said C. D., his executors, administrators, and assigns of the said annuity, yearly rent, or sum of £——, and all arrears thereof, up to the day of the decease of the said A. B., and of all such costs, charges, and expenses as aforesaid, the said C. D., his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the heirs, executors, or administrators of the said A. B., acknowledge satisfaction upon the said judgment on the record thereof in due form of law, or do any further or other reasonable acts, matters, or things that may then be required in regard thereto.

For preserving the benefit of a judgment, without the necessity of a scire facias or a certificate of the life of the party. (In mortgages).

LXII. And it is hereby agreed, that the judgment to be entered up by virtue of the aforesaid warrant of attorney shall be a security for payment of the said sum of £—— and interest, according to the true intent and meaning of these presents, and that no execution shall be issued or taken out upon the judgment to be entered up as aforesaid, unless default shall be made in payment of the said sum of £——, and interest, or some part thereof respectively, at the times and in manner hereinbefore appointed for payment thereof respectively; And that it shall not be necessary for the said A. B. [*mortgagee*], his executors, administrators, or assigns, to revive or cause to be revived the said judgment, nor do any act, matter, or thing in order to keep the same on foot, in case the said judgment shall remain entered on record for the space of one year or upwards, without any proceedings

upon the same (*a*), or in case of the death (*b*) of the said C. D. [*mortgagor*], his executors, administrators, or assigns, but yet the said A. B. shall be at liberty and have full and lawful power and authority to issue any writ or writs of execution upon the same judgment, in the same or the like manner as if the same judgment had been revived and kept on foot, or the said C. D. were living, notwithstanding any rule, usage, or practice of the court in which the said judgment shall be entered on record to the contrary; and that the said C. D., his heirs, executors, or administrators, or any of them, shall not nor will have, take, or receive any advantage for want of the said judgment having been revived or kept on foot, or by reason of any other defect therein or in respect thereof.

LXIII. And it is hereby declared and agreed (*c*) by and Provisions re-

(*a*) Vide art. lxii. note.

(*b*) Notwithstanding the dictum, or supposed dictum, of Lord Tenterden in *Morris* v. *Jones*, 3 Dowl. & Ryl. 605, 2 Barn. & Cr. 243, it has since been held, that an agreement of this kind, waiving the objection of the defendant's death, is not binding upon his representatives, and still less on the Court. *Heath* v. *Brindley*, 2 Adol. & Ell. 365.

(*c*) "And whereas, upon the treaty for the purchase of the said leasehold messuages, &c. it was agreed that the judgment to be confessed upon or by virtue of the said hereinbefore recited bond and warrant of attorney of the said A. B. should be forthwith entered up of record in her Majesty's Court of Queen's Bench at Westminster (*d*); and that a writ of fieri facias should also be forthwith issued against the said A. B. for the purpose only of being returned nulla bona, and with a view only to avoid the necessity of reviving the same judgment (as far as such proceeding can avoid the same), in the event of default being made in the payment of the instalments hereinbefore covenanted to be paid by the said A. B., and by reason whereof it shall or may be necessary to issue execution against the said A. B."

(*d*) By one of the rules of the Common Law Courts (H. T. 4 Will. IV. Rule 3), it is ordered, that "All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day."

specting bond and judgment given for securing the payment of instalments of purchase-money, to prevent the necessity of reviving judgment, and to regulate the executions to be levied under same.

between the said A. B. and C. D., that a judgment against the said A. B. at the suit of the said C. D., his executors or administrators, shall and may be forthwith entered up of record in her Majesty's Court of Q. B. at W., upon or by virtue of the said recited bond and warrant of attorney of the said A. B., and that a writ of fieri facias shall and may be issued against the said A. B. for the purpose only of being returned nulla bona upon the record of the said judgment; And that the said judgment, so to be entered of record as aforesaid, with such proceedings to be had thereon as aforesaid, shall be considered as a security only for the better and more effectually securing the payment to the said C. D., his executors, administrators, or assigns, of the said sum of £——, and interest, by the said A. B., in manner aforesaid, according to the tenour of the said bond of the said A. B., and that no further or other execution or executions shall be issued or taken out upon the said judgment, unless and until one or more of the said respective instalments, or some part or portion thereof, shall be in arrear for six calendar months next after some or one of the days or times hereinbefore limited and appointed for payment thereof as aforesaid: Provided always, and it is hereby declared and agreed by and between the said A. B. and C. D., and the said A. B. for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, that when and so often as the said several instalments hereinbefore covenanted to be paid by the said A. B., or any or either of them, or any part or parts of any or either of them, shall be behind and unpaid by the space of six calendar months next over or after any one of the days or times hereinbefore mentioned or appointed for payment thereof, then and so often and in every such case it shall and may be lawful to and for the said C. D., his executors, administrators, and assigns, to sue out execution or executions upon or by virtue of the said intended judgment, for the recovery, not only of the arrears of the said instalments, but also of the whole residue of the said principal sum of £——, and interest, notwithstanding the same may not, according to the instalments aforesaid, be then due and payable, and all costs of suit, sheriff's fees, poundage, and other incidental expenses, and also all costs, charges, and

expenses which the said C. D., his executors, administrators, or assigns, shall or may from time to time sustain or be put unto in making sale, by public auction or otherwise, of the goods, chattels, and things taken under and sold in pursuance of any execution or executions which shall or may from time to time be issued upon the said intended judgment so to be entered up as aforesaid; and that it shall not be necessary for the said C. D., his executors, administrators, or assigns, to revive or cause the said judgment to be revived, or to do any act, matter, or thing to keep the same on foot, notwithstanding the same judgment shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the said Court of Queen's Bench in which the said judgment shall be entered on record to the contrary; and that the said A. B., his heirs, executors, or administrators, shall not nor will have, take, receive, or attempt, by any ways or means, to have or receive any advantage for want of reviving or keeping the said judgment on foot: Provided always, and it is hereby further agreed and declared, that from and after full payment of the said several instalments, and all arrears to become due in respect of the same, or any or either of them, and all such costs, charges, damages, interest, and expenses as aforesaid, and all other costs, charges, damages, and expenses in anywise relating to the said judgment and premises, he the said C. D., his executors, administrators, and assigns, shall and will, upon the request, and at the costs and charges of the said A. B., or the person or persons requiring the same, acknowledge satisfaction of the said judgment to be entered upon the record thereof: Provided always, and in case, between the time of issuing any writ or writs of execution on the said judgment for £—— and the time to be not less than —— days which shall be appointed for the sale of the goods and chattels taken in execution, the said A. B., his heirs, executors, or administrators, do and shall tender to the said C. D., his executors or administrators, a warrant of attorney for confessing judgment on an action of debt for a sum equal to double the amount of so much of the instalment of the said sum of £—— as shall not have become due and payable, then and in that case the said execution shall be enforced

and carried into effect for so much only of the said sum of £—— and interest as shall then be payable, and such costs, charges, and expenses as aforesaid, and of entering up such new judgment, and that the like course shall be observed on each succeeding execution to be taken by virtue of each bond to be given as aforesaid; And further, that in case before the time of issuing any writ or writs of execution on any judgment or judgments to be obtained by virtue of the said bond for £——, and the time, to be not less than —— days, which shall be appointed for the sale of the goods and chattels to be taken in execution by virtue of the last-mentioned judgment, the said A. B., E. F., and G. H. respectively, and their respective real and personal representatives, or such of them as shall be adult and free from disabilities, do and shall tender to the said C. D., his executors or administrators, a warrant of attorney for confessing judgment in an action of debt for a sum equal to double the amount of so much of the instalments of the said sum of £—— as shall not have become due and payable, then and in that case the said last-mentioned execution shall be enforced and carried into effect for so much only of the said sum of £——, and interest, as shall then be payable, and such costs, charges, and expenses as aforesaid, and also of entering up judgment on such new judgment, and that the like course shall be observed on each succeeding execution to be taken by virtue of each bond to be given as aforesaid; And the said C. D. for himself, his heirs, executors, and administrators, doth covenant, declare, and agree, to and with the said A. B., his executors and administrators, that no goods, chattels, or effects, as aforesaid, shall be sold or offered for sale within —— days after the same respectively shall be taken in execution, without the previous consent in writing of the said A. B., his executors or administrators, and also of the person or persons whose goods and chattels shall be taken in execution, and be intended to be sold; And further, that the said C. D., his executors or administrators, is and are to be at liberty to commence any action on the said bond for £——, immediately after the condition of the same bond shall be broken, yet he the said C. D., his executors or administrators, shall not sue or per-

mit to be sued any execution by virtue of any judgment or judgments to be obtained by virtue of the same bond, at any time within six calendar months after the instalment then in arrear became due and payable; And further, that in case any action or actions shall be commenced on the said bond for £—— and before execution sued, the said A. B., E. F., and G. H., or any or either of them, their or any or either of their heirs, executors, or administrators, shall pay or tender to the said C. D., his executors or administrators, the amount of the instalments then due and in arrear, and the costs, charges, and expenses up to that time, then no further proceedings by one judgment shall be taken on the said action or actions, until default in the payment of some further instalment of the said sum of £—— and interest; but the judgment or judgments to be obtained in such action or actions shall remain and be in force as a security for any instalment of the said sum of £—— and interest which may thereafter become due and payable, anything hereinbefore contained to the contrary notwithstanding.

To assume name and bear arms; and on neglect or refusal, estates to go over. Vide Butler's Co. Litt. 327. a. note.

LXIV. Provided always, and it is hereby agreed and declared by and between the parties to these presents, (as far as they respectively are interested), that every person and persons not being of the surname of K., who by virtue of these presents, either in his, her, or their own right, or in right of his or their wife or respective wives, shall become entitled to the possession or to the receipt of the rents and profits of all or any or any part of the manors &c. hereby released or otherwise assured, or intended so to be, shall within the space of twelve calendar months next after he, she, or they shall severally and respectively be of age, and become entitled to the possession or to the receipt of the rents and profits thereof; and also the husbands when the same persons, being females, shall from time to time intermarry, shall within twelve calendar months after they in right of their wives shall be in the possession or in the receipt of the rents of all or any or any part of the same hereditaments, take upon himself, herself, and themselves respectively, and use in all deeds and writings whereto or wherein he, she, or they shall be a party or parties, the surname of

K., either alone or together with (*a*), and if together with, then after his, her, or their own surname or surnames; and also quarter the arms of K. with his, her, or their own family arms; and before the end of thirty calendar months after he, she, or they shall be so in possession or receipt of the rents and profits, apply for and endeavour to obtain an Act of Parliament, or a proper licence from the Crown, or take such other means as may be requisite or necessary or proper, if any shall be requisite (*b*), to enable and authorize him, her, or them respectively to take, use, and bear the said surname and arms of K.; and in case any such person or persons should refuse or neglect or should discontinue to take or use such surname and arms, or to take such proper steps and measures as may be requisite to enable and authorize him, her, or them so to do, within the said times hereinbefore limited in that behalf; then from and after the expiration of the said terms respectively, the estate of the person or persons respectively so refusing, neglecting, or discontinuing, or whose husbands shall so refuse, neglect, or discontinue, shall cease, as if he, she, or they respectively being tenant or tenants for life, was or were actually dead, or being tenant or tenants in tail, was or were actually dead without issue inheritable to his, her, or their estate or estates; and the said hereditaments shall in such case immediately thereupon go to the person or persons next in remainder under and by virtue of the limitations hereinbefore contained, in the same manner as if such person or persons so neglecting, or refusing, or discontinuing, or whose husband or husbands shall so neglect, or refuse, or discontinue, being tenant or tenants

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(*a*) Mr. Butler objected to a title derived subject to a proviso to take the surname of Newman *only*, because the vendor had in one instance, which appeared on the face of the abstract, used the name of Newman in *addition* to his former surname, and not exclusive of it; and an abatement was made on account of this defect. To avoid such a consequence, it is desirable to adopt the form in the text,—

"either alone or together with."

(*b*) Whether any licence or Act of Parliament be necessary to enable a person to assume another surname, vide book ii. chap. i. in the first volume of this work, or Recital-Book, tit. Surname, art. 607, note.

for life, was or were actually dead, or being a tenant or tenants in tail, was or were actually dead without issue inheritable to his, her, or their estate or estates respectively, without prejudice nevertheless to any lease or leases, demise or demises, jointure or jointures, portion or portions, charge or charges, which before such cesser or determination shall have been made of any of the said hereditaments, in pursuance of the powers hereinafter in that behalf contained. Provided nevertheless, that the cesser or determination of the estate of any tenant or tenants for life shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to his, her, or their sons or daughters, or to any other person or persons, but the remainder limited to the said trustees and their heirs during the life of each such tenant for life respectively shall after such cesser or determination take effect in possession, and continue, for preserving such contingent remainders, and giving them effect as they may arise; and that the said trustees and their heirs shall, after such cesser or determination, receive the rents and profits of the same premises which would belong to such tenant for life if such cesser or determination had not taken place, and pay the same to the person or persons then in being and actually living, who for the time being shall, as the beneficial owner or owners, be seised of or entitled to the first or next vested estate in remainder, and in the same parts, shares, and proportions as he, she, and they respectively shall, for the time being, be seised of or entitled to the same hereditaments.

That determination of any life estate shall not prejudice any of the contingent remainders over.

LXV. Provided always, and it is my will and desire, and I do hereby direct, that all and every the person and persons to or for whose use the manors &c. hereinbefore devised or limited in remainder from and after the decease of the said E. F. my wife, shall, if of the age of twenty-one years, as and when and within the space of twelve calendar months next after he and they shall severally become entitled thereto, for an estate of freehold, or of inheritance in possession, under or by virtue of this my will, and if not of the age of twenty-one years, then within twelve calendar months after attaining that age, assume and take upon himself and them-

To take name and bear arms. (Another form).

selves the surname of B. (if not previously of that name), and in exclusion of any other surname (*a*); and by such name only, and by no other, thenceforth to style and subscribe himself and themselves respectively, in all deeds, instruments, and writings, and on all other occasions; and also do and shall bear and use the arms of my family as the same have been used by me and my ancestors, in case her Majesty's royal licence and authority for the taking and assuming the said surname, and bearing and using the said arms, can be by any means obtained; And in case any such person or persons shall refuse, decline, or neglect to take, assume, and use such surname and arms respectively, or to endeavour to obtain such licence and authority as aforesaid for that purpose, for the space of twelve calendar months after he or they shall severally become so entitled as aforesaid, then and as often as the case shall happen, the estate and interest of him or them of or in the said manors &c. shall, from and immediately after the expiration of the said space of twelve calendar months, cease, determine, and be void to all intents and purposes whatsoever; and every the said manors &c. so devised as aforesaid, shall, immediately thereupon, go to the person or persons who shall then be next in remainder under or by virtue of the devise or limitation hereinbefore contained, in the same manner as if he or they so refusing, declining, or neglecting as aforesaid, if tenant or tenants for life, was or were actually dead without having had any son, or if tenant or tenants in tail, was or were dead without issue inheritable to his or their estate or estates; and then and in such case, all the manors &c. shall, immediately thereupon, go to the person or persons who shall be then next in remainder, under or by virtue of the devise or limitation hereinbefore contained respecting the same; but nevertheless without prejudice to any lease or leases which, prior to such cesser or determination of the said estate and interest, or estates and interests, had been granted of any of the said hereditaments, in pursuance of the power in that behalf herein contained. Provided always, that any such

(*a*) Vide art. lxiv. note.

cesser or determination of the estate of any tenant for life shall not operate to destroy or prejudice the estate limited to trustees for his life, nor any of the contingent uses or estates hereinbefore limited in remainder to his or their sons or other issue respectively, or other person or persons to whom such uses or estates are so hereby limited; but the remainders hereinbefore limited to the said A. B. and C.D., their executors and administrators, during the lives of each such tenant for life, shall, upon every such cesser or determination, take effect and continue for the benefit of the person or persons for the time being entitled to the next estate in remainder, and for preserving and giving effect to such contingent uses and estates as they shall respectively arise; and that such trustees, their executors and administrators, shall, from time to time, during the suspense or contingency of the use or estate then next in remainder or expectancy (but no longer), receive, pay, and apply the rents and profits of the hereditaments which would have belonged to such tenant for life if no cesser or determination had taken place, unto such person or persons, and for such intents and purposes, and in such manner as the same would have been payable or applicable under or by virtue of the limitations and powers of this will, in case such tenant for life were then actually dead without having had any son.

To take a name, and bear arms, and reside in a mansion-house for a certain time in the year, with various other restrictions, and ceasing the estates of tenants for life on default. (In wills).

LXVI. Provided always, and I declare my will to be, that all and every person and persons who by virtue of the limitations hereinbefore contained shall become entitled to the possession or to the receipt of the rents and profits of the hereditaments and premises hereby settled as aforesaid for the benefit of my said sister, with remainders as aforesaid, and who shall not then be called by the name or use the arms of Hare, shall, within the space of one year next after he, she, or they respectively shall severally become entitled to the possession or to the rents and profits of the same hereditaments, and also the person or persons to whom such of the same persons respectively as shall be females shall from time to time be married, shall, within one year next after such marriages respectively, or, as the case shall require, within one year next after his or their wife or respective

wives shall become entitled as aforesaid, take upon himself, herself, or themselves respectively, and use in all deeds and writings whereto or wherein he, she, or they shall or may be party or parties, and upon all other occasions, the surname of Hare, either without or in addition to his, her, or their own family surname (*a*), and also shall quarter the arms of Hare with his, her, or their own family arms, and shall, within the space of one year thence next ensuing, apply for and endeavour to obtain an Act of Parliament or proper licence from the Crown, or take such means as may be requisite and proper to enable and authorize him, her, or them respectively, rightfully, and legally to use and bear the said surname and arms of Hare. Provided also, and my will further is, that in case any such person or persons, or being a female or females, her or their husband or husbands, shall refuse or neglect to take and use such surname and arms within the times hereinbefore limited in that behalf, or shall neglect or refuse to apply for and obtain such Act of Parliament or licence as aforesaid, or shall at any time during his, her, or their life or lives, except by marriage, and then only subject to the restrictions hereinbefore contained, discontinue or cease to use such surname and arms; or in case any person or persons shall become entitled to the said hereditaments and premises under this my will, shall not reside in the said capital mansion house called S. H. for six months at least in every year, computing the same from day to day, and not necessarily for a continuing space of time, or shall let the said mansion house with the appurtenances, or any part thereof, or the offices or gardens belonging thereto, to any person or persons whomsoever, or shall not keep the said buildings of the said hereditaments and premises insured from loss or damage by fire in the same manner and for the same sums respectively as the same respectively are now insured, being in the sum of £——, or in case of any loss or damage by fire, shall not within three years apply the money to be recovered under or by virtue of such insurance

Proviso for ceasing estate upon default in taking name and arms, residing upon mansion-house, and repairing and insuring same;

(*a*) And if in addition to them,—

"after his or their own family surname."

in repairing the loss or damage which shall be sustained, and for which such money shall be recovered; or in case any person or persons who shall be entitled as aforesaid, being a tenant or tenants for life, or being a tenant or tenants in tail under the age of twenty-one years, shall cut down any timber, or other trees likely to become timber or planted for ornament, and which are growing or shall grow on all or any part of the said hereditaments (except for the purpose of repairing the buildings upon the said settled hereditaments, and except in taking down such trees as shall be injurious to the growth of other trees,) or shall apply any trees taken down by reason of their injuring other neighbouring trees for any other purposes than such repairs as aforesaid, or for raising money to be applied in purchasing lands to be settled to the subsisting uses of this my will, as far as relates to the said settled estates; or shall commit any manner of wilful waste, spoil, or destruction on all or any part of the said settled estates; or in case any person or persons who shall be entitled as aforesaid shall not yearly and every year lay out £—— at least in or about the repairs, or if no repairs are wanting, the decorations and ornamenting of the said capital mansion called S. H., and the buildings thereto belonging, then and in either of the said cases, the estate or estates of every person by whom, or by whose husband, default or failure shall be made, or offence committed in all, any, or either of the particulars hereinbefore mentioned, shall cease, determine, and become void, as to any person or persons being tenant or tenants for life, as if he, she, or they were actually dead, or being tenant or tenants in tail, as if he, she, or they were actually dead without issue inheritable to his, her, or their estate or estates; nevertheless subject and without prejudice to the estate or estates limited to my said trustees for supporting contingent remainders; and in all, any, or either of the said cases, and when and as soon as the same shall happen, all the said hundreds, manors, hereditaments, and premises so settled as aforesaid, if vested in a trustee or trustees for supporting contingent remainders, then also the rents and profits thereof shall go and remain to the person or persons next in remainder, under the limitations hereinbefore contained, in the same manner as if such

or if tenant for life or in tail under twenty-one, cut down timber, &c.;

or commit waste;

or not lay out £— in repairs;

estate to cease,

(without prejudice to estates limited to trustees for preserving contingent remainders),

and go to next in remainder,

person or persons by whom or whose husband default or failure shall be made, or any offence committed in all or any or either of the particulars hereinbefore mentioned, being a tenant or tenants for life, was or were actually dead, or being a tenant or tenants in tail, was or were actually dead without issue inheritable to his, her, or their estate or estates respectively charged; nevertheless and subject and without prejudice to any appointment or appointments by way of lease or demise, which shall be made before such cesser or determination of the estate or estates of the same person or persons respectively, by virtue of the power hereinafter given or contained for that purpose. Provided also, and my will further is, that the cesser or determination of the estate of any tenant for life, by force of the proviso hereinbefore contained, shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to his, her, or their son or sons, daughter or daughters, or any other person or persons, but that the remainders limited to the said A. B. and C. D., their heirs and assigns, during the life of such tenant for life, shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise; and that immediately from and after such cesser or determination of such preceding estate for life, and during the suspense and contingency of such expectant remainder, the said A. B. and C. D., their heirs and assigns, shall receive, pay, and apply the rents and profits of the same hereditaments and premises which would belong to such tenant for life if such cesser or determination had not taken place, unto the person or persons, and for the intents and purposes, and in the manner to, for, and in which the same rents and profits would be or would have been payable and applicable under and by virtue of the limitations hereinbefore contained, in case such tenant or tenants for life was or were actually deceased; so that immediately from and after such cesser or determination, the issue of such tenant for life, entitled for the time being under the limitations aforesaid to the said hereditaments and premises in remainder immediately expectant on the decease of such tenant for life, may be entitled to the rents and profits of the said hereditaments and premises, for his

without prejudice to leases made before forfeiture.

Such cessers not to prejudice contingent remainders.

and their own proper use and benefit respectively, during the life of the parent, as if such parent were dead; and in case no such issue shall be in existence, then during the vacancy or contingency of such issue, the person next entitled for the time being, under the limitations aforesaid, to a vested remainder in the said hereditaments and premises expectant on the decease of such tenant for life, and failure of issue of the body of her children inheritable as aforesaid, shall and may be entitled to the said rents and profits, for his, her, and their proper use and benefit respectively, without any exclusion of or prejudice to the estate, interest, or right of any such children or issue afterwards coming into existence from or after the time of birth of such children or issue respectively.

For cesser of estate, if devisees should refuse to take and use name and arms, or should cut timber or commit waste, or should not lay out a yearly sum in repairs: such cesser however not to prejudice contingent remainders. (In wills).

LXVII. Provided also, and my will further is, that in case any such person or persons, or any such tenant for life or in tail male, or in tail, or, being a female or females, her or their husband or husbands, shall, for the space of two years next after the time hereby appointed for that purpose, refuse or neglect to take and use my said surname and arms, or to apply for such Act of Parliament or licence as aforesaid, or shall at any time during his, her, or their life or lives discontinue or cease to use such surname and arms; or in case any person or persons, being tenant for life or in tail under this my will, or her or their husbands, should cut down any timber, or other trees likely to become timber, or planted for ornament, and which are growing or which shall grow on all or any part of the said hereditaments, except for the purpose of erecting or repairing any buildings upon the estates hereby devised or assumed to be devised, or making or repairing any temporary fences, or permanent hedges, fences, or gates thereon, and except in taking down such trees as shall be injurious to the growth of other trees, or such trees (not being ornamental trees) as are not likely to improve, or which may be injured by longer standing, or such trees as may require to be taken down in furtherance of any improvements on my said estates; or shall apply any trees whatsoever taken down for any other purpose than such repairs as aforesaid, or for raising money to be applied

in purchasing lands to be settled to the subsisting uses of this my will, as far as relates to the said estates hereby devised, or shall commit any manner of wilful waste, spoil, or destruction on all or any part of the said estates; or in case any such tenant for life or in tail as aforesaid, when in such actual possession or receipt of the rents as aforesaid, or the guardians, husbands, or trustees of the same persons respectively, until they shall severally be in such possession and receipt, shall not, yearly and every year, during the continuance of the estates of the same persons respectively, lay out £—— at least in or about the repairs, or if no repairs are wanting, then in the decorations and ornamenting of the said capital mansion-house called S. H., and the buildings, gardens, and pleasure-grounds thereto belonging, and in repairing and keeping in good and neat order and condition the dormitory belonging to me in or adjoining the church of S. B. aforesaid, then and in any of the said cases the estate or estates of every person who or whose guardians, trustees, or husbands, should so refuse or neglect as aforesaid, shall cease, determine, and become void, as to my said wife, as if determined by her death or second marriage, and as to any other person being tenant for life, as if he or she were then actually dead, and as to any person being tenant in tail, as if he or she were then actually dead without issue inheritable to his or her estate tail under this my will; But my will further is, that the cesser or determination of the estate of any tenant for life by force of the present proviso shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to his, her, or their son or sons, daughter or daughters, or any other person or persons; but that the remainder limited to the said A. B. and C. D., their heirs and assigns, during the life of each such tenant for life, shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise; and that immediately from and after such cesser or determination of such preceding estate for life as aforesaid, and during the suspense and contingency of such expectant remainder, the said A. B. and C. D., their heirs and assigns, shall receive, pay, and apply the rents and profits of the hereditaments and

premises which would belong to such tenant for life if such cesser or determination had not taken place, unto the person or persons, and for the intents and purposes, and in the manner to, for, and in which the same rents and profits would be or would have been payable and applicable under and by virtue of the limitations hereinbefore contained, in case such tenant or tenants for life was or were actually dead, so that immediately from and after such cesser or determination, any tenant for life in remainder, or the issue of such tenant for life entitled for the time being under the limitations and provisoes aforesaid, may be entitled to the rents and profits of the said hereditaments and premises, as if the preceding tenant for life committing such breach of the conditions aforesaid were actually dead.

For suspending the life interest of testator's daughter in a money-fund, on her cohabiting or maintaining any intercourse with her present husband. (In wills).

LXVIII. Provided always, and my will is, that if the said A. B. shall at any time or times cohabit or hold any intercourse of any kind whatsoever, either directly or indirectly, with her husband the said C. B., or should, either directly or indirectly, pay, advance, give, or contribute any monies, necessaries, or effects, to the said C. B., or for his benefit, or on his account, then and from time to time as often as the same shall happen, and during so long time as the said A. B. shall continue so to cohabit or hold intercourse with her said husband, or to pay, advance, give, or contribute any monies, necessaries, or effects as aforesaid, the interest, dividends, and income of the said sum of £—— stocks, funds, and securities, shall, from the last half-yearly day of payment thereof preceding any such act, and until the next half-yearly day of payment after the said A. B. shall discontinue the same, cease to be payable to the said A. B., and shall fall into and become part of the residue of my personal estate hereinbefore bequeathed; And that my said trustees and trustee for the time being shall, from time to time, have the discretion of suspending and again renewing the payment of the said interest, dividends, and income, upon such evidence as they shall think fit, or upon their own personal information, without any obligation on the said trustees or trustee to communicate to the said A. B., or any other person or persons whomsoever, their grounds or reasons

for any such suspension, or upon what evidence or information the same shall have been determined; And it is also my will, and I hereby declare, that if the said A. B. shall at any time hereafter have any issue by her said husband, that then and in such case the right of the said A. B. to receive the dividends, interest, and income of the said sum of £—— stocks, funds, and securities, shall, for the benefit of the other person or persons entitled thereto under this my will, cease and determine, to all intents and purposes, and the same shall become payable, and be paid, assured, and transferred, in the same manner as if the said A. B. was actually dead.

For ceasing trusts in favour of testator's niece, if she shall intermarry with any person of the kindred of A. B. deceased. (In wills).

LXIX. Provided always, and I do hereby declare my will to be, that the trusts hereinbefore declared for the benefit of my said niece A. B. are upon this express condition, that she shall not at any time intermarry with any person of the kindred or blood of my late husband; and that if she shall at any time intermarry with any such person, then and in such case the trusts hereinbefore declared in favour of the said A. B. during her life, and the power of appointment hereinbefore given to her, shall thereupon cease, determine, and become void; and then and in that case it is my will, and I do hereby direct that my said trustees and trustee for the time being do and shall thenceforth stand possessed of and interested in all and singular the said trust monies and effects, upon and for the same trusts as the same would then be subject to under this my will, in case the said A. B. were then dead without having made any such appointment; but nevertheless the said A. B. shall in that event be considered as one of the children of my brother C. B., entitled to a share or shares under the trusts hereinbefore contained.

For ceasing estate of younger son, becoming an elder or only son. (In wills).

LXX. Provided always, and in case any such younger son shall in the lifetime of his said father and mother, or of either of them, become an eldest or only son by reason of the death of the elder son or sons, and the failure of his or their issue, then and in that case the estate or estates of each such younger son becoming an eldest or only son shall cease in the same manner, and for the benefit of the same persons

as if he had never been born, or being born, was dead without issue; anything contained in this my will to the contrary notwithstanding.

That son of intended marriage becoming heir apparent, shall be excluded from any part of a sum of money.

LXXI. Provided always, and in case any son of the said intended marriage should become the heir or heir apparent of the said A. B., either in the lifetime of the said A. B. or afterwards, and while such son shall be under the age of twenty-one years, then and in that case such son shall be excluded from any part of the said sum of £——, except such sum as he may have received under any appointment or for advancement, in the same or the like manner as if he had not been born, and for the benefit of the other person or persons (if any) who would have been entitled to all or a part of the said sum of £——.

That if any son of intended marriage shall become entitled to any part of father's real estate, he shall be excluded from a proportional share of settled monies.

LXXII. Provided always, and in case any son of the said intended marriage shall become entitled to any part of the real estates of his said father, by descent from or gift by him, such son shall be excluded from any part or share of the said trust monies, stocks, funds, and securities, except such as will put him on an equal footing in point of benefit with the other children of the said intended marriage; and such exclusion shall be for the benefit of the other children of the same marriage.

That in case any person entitled to any estate of freehold or inheritance in possession under present will, shall also become entitled to an estate of freehold or inheritance in a certain

LXXIII. Provided always, and I do hereby declare my will to be, that in case at any time during the life of the said A. B., or at any time or times after his decease, any person besides the said A. B. being entitled to all or any part of the manors, messuages, and other hereditaments hereby devised under the limitations hereinbefore contained, to the value of £—— a year or upwards, for the first estate of inheritance, either in possession or remainder, should also become entitled to an estate of freehold or of inheritance in possession, or to any chattel interest by way of life estate, or to the first estate of inheritance in remainder or reversion, in all or any part (of the value of £—— a year or upwards) of the estates now enjoyed by Sir C. D., Bart., and either by descent settlement, or will of or from the said Sir C. D., or any

for such person to retain the estate under the will upon conveying the other estate to the persons who would have taken under the proviso for cesser, in case it had been called into effect. (In wills).

or predecessor, or of the said D. D. my cousin, then and in that case, and as often as the same shall happen, and unless such option as hereinafter mentioned should be declared and made, and also carried into effect by a conveyance within the time hereinafter limited in that behalf, the estate of each person so for the time being entitled shall, as to my freehold and copyhold estates, cease, determine, and be void, as if the person becoming so entitled had departed this life without issue inheritable to his estate; and if such event should happen before the end of twenty-one years from my death, or from the decease of the survivor of them my said sister, the said Sir C. D., and D. D., then as to my leasehold estates and heir-looms, as if such person had departed this life under the age of twenty-one years, and without leaving issue lawfully begotten living at his death; and my manors and other hereditaments, leasehold estates, and heir-looms, to which each such person shall for the time being become so entitled, shall remain to the person or persons to whom the same would have devolved or remained in case the person so for the time being and from to time entitled had actually departed this life, as to my said freehold and copyhold estates, without issue inheritable to his estate; and as to my leasehold estates and heir-looms, as if such person had departed this life under the age of twenty-one years, and without leaving issue living at his death, and for the same or the like estates, and with the same or the like remainders and limitations over, as if the estate of the person so becoming entitled to all or such part as aforesaid of my estate, and also all or such part as aforesaid of the A. estate, were actually determined, and were as to such leasehold estates determined in due time to give effect to the next estate or interest in remainder over or in succession as aforesaid. And by way of recommendation, and not of trust or condition, I recommend my said cousin D. D., as far as it may be in his power, to make such arrangements as will most effectually keep my estate separate and distinct in ownership and enjoyment from the A. estate. Provided always, and if the person becoming entitled to the A. estate, or part thereof to the value aforesaid, should declare his option to retain my estate, and to substitute the A. estate by settling the same to the uses hereinbefore in the proviso of cesser

and limitation over intended to be declared of my estate, then and in that case, on the execution of a settlement, or on obtaining an act of parliament for that purpose, as the circumstances of the case may require, the person so making such option shall, if such option and settlement be made within one year next after the person so entitled to the A. estate shall become entitled thereto, be discharged from the proviso of cesser and limitation over hereinbefore contained.

That in case any child of the marriage to whom an estate tail is limited shall die in the lifetime of the parents, or either of them, leaving children, then the estate tail of that child shall cease, and the share of that child shall be to the use of the children of that child equally as tenants in common in tail, with cross remainders among them.

LXXIV. Provided always, and (subject and without prejudice to any appointment or appointments which shall be made under or by virtue of and pursuant to the power of appointment hereinbefore contained) in case each or either of the children of the said intended marriage, to whom estates tail are hereby limited, shall depart this life in the lifetime of both or either of them the said A. B. and C. D. his intended wife, leaving a child or children living at his or her death, then and in that case the estate or estates tail of each child respectively so dying, of and in his or her original share, and also any additional or surviving share or shares of and in the said messuages &c. hereby released, or otherwise assured or intended so to be, shall cease on his or her death; and the share or shares of each child so dying shall, from and after his or her death, (subject nevertheless and without prejudice as aforesaid, and also subject and without prejudice to the estate or estates for the life of the said A. B. and C. D. respectively), remain, continue, and be to the use of his or her child if only one, or children if more than one, living at his or her death, to be equally divided between the same grandchildren if more than one, share and share alike as tenants in common, and not as joint tenants, and the heirs of the body or several and respective bodies of the same grandchild or grandchildren respectively lawfully issuing; and on failure of the issue of any one or more of the same grandchildren, in case there shall be more than one, then the original part or share, parts or shares, of and in the said messuages, &c. which shall belong to the grandchild or grandchildren of whose issue there shall be such failure, and also as to the part or share, or several and respective parts or shares, of and in the same messuages, &c. which from time

to time shall belong to, or vest in or be taken by, the same grandchild or grandchildren respectively, or his, her, or their issue under this present limitation of cross remainders, shall belong to and vest and remain in the brother or sister, or brothers or sisters of the same grandchild or grandchildren, to be equally divided between or among the same brothers and sisters, if more than one, share and share alike as tenants in common, and not as joint tenants, and the heirs of the body or several and respective bodies of the same brother or sister, or brothers and sisters respectively, lawfully issuing; and on failure of the issue of all the children of each child of the said intended marriage, so dying as aforesaid in the lifetime of the said A. B. and C. D., his intended wife, or either of them, then the original, and also any additional share or shares of each such child so dying, shall go and remain in the same manner, and to the same uses, and under and subject to the same limitations over, and cross remainders, as the same share or shares is or are hereinbefore limited to go or remain on the failure of the issue of the child so dying, or would have gone or remained in case these present provisions had not been introduced.

That a son or sons who, during life of parents or afterwards, and before attaining twenty-one, shall take estate in premises, either in possession, or immediately expectant on death of his father, shall so take upon terms of waiving in favour of his brothers or sisters a provision made by a prior deed, viz. marriage articles.

LXXV. Provided always, and it is hereby declared and agreed, by and between all the said parties to these presents, as far as they respectively are interested, to be the true intent and meaning of them and of these presents, that every son or sons of the said A. B. and C. his wife, who during the life of his father and mother, or the survivor of them, or afterwards, and before he shall attain his age of twenty-one years, shall take an estate in tail or other estate or interest in the said messuages, &c. or any of them, either in possession or immediately expectant on the death of his father the said A. B., under the uses hereinbefore declared, shall take such estate tail or other estate or interest, upon the terms only that he and they shall waive and release all his and their right and interest in and to the provision made for him or them under and by virtue of an agreement under the hand and seal of the said A. B., bearing date &c. and entered into by him previous to his marriage with the said C. his wife, then C. D., spinster, for settling the sum of £——:

for the benefit of the children of the said A. B. and C. his wife, in favour of his or their brother and sister, or brothers and sisters in the same or the like manner, shares, and proportions as if he or they the son or sons so becoming entitled had never been born.

To determine the husband's life interest on bankruptcy, &c. in the same manner as if he were dead, with a provision for the separate use of wife during coverture, and making the husband's life interest &c. in the money a fund for answering the sums to be advanced to him under the trusts of the settlement. (In settlement of personalty). Vide Tit. VII. art. cxxxvii.

LXXVI. Provided always, and it is hereby declared and agreed, that in case the said A. B. shall at any time during the lifetime of the said C. D., or after her death, and while there shall be any issue of the said intended marriage, commit any act of bankruptcy on which a fiat of bankrupt shall be duly issued against him, and he shall be declared a bankrupt, or shall take the benefit of any act made or to be made for the relief of insolvent debtors, [or shall do any act with a view to assign, charge, or incumber, or anticipate (*a*) the growing payments of all or any part of the dividends, interest, and income of the said second and third mentioned sums of £—— and £——, or either of them, or the stocks, funds, and securities in or upon which the same sums or either of them shall from time to time be invested]; then and in that case the right of the said A. B. to receive the dividends, interest, and income of the same two sums, and the stocks, funds, and securities in or upon which the same shall be invested, shall for the benefit of the said C. D., or the children or issue of the said intended marriage, cease and be void to all intents and purposes, in the same manner as if the said A. B. was actually dead; and that in any or either of the said cases, the dividends, interest, and income of the same two sums of £—— and £——, and the stocks, funds, and securities in or upon which the same shall be invested, shall during the joint lives of the said A. B. and C. D., provided the said C. D. shall be living at that time, be held and applied upon trust for the sole use of the said C. D., separate and apart from and exclusive of the said A. B., and so and in such manner that the same may not be under his control, or subject or liable to his debts, bankruptcy, insol-

(*a*) *Qu.* whether this clause can be supported? Vide Vol. I. book iii. chap. 6. of this work.

vency, contracts, forfeitures, or engagements; and so and in such manner that the receipts of the said C. D., or any person or persons to whom she may appoint the same when due, may be good and effectual discharges for the money which shall be thereby expressed to be received; yet nevertheless so that the said C. D. may not anticipate, charge, or assign all or any part of the same dividends, interest, and income, before the same shall become due and payable; And moreover that in case the said A. B. shall be declared bankrupt, or shall take the benefit of any act for the relief of insolvent debtors, and at that time shall have all or any part of the said second-mentioned sum of £——, or the produce of the securities for the same, in his hands, then and in that case the life interest of the said A. B. of and in the said second and third mentioned sums of £—— and £——, and the stocks, funds, and securities in or upon which the same shall be invested, and also the contingent interest of the said A. B. in the principal of the same trust monies, stocks, funds, and securities, shall be a fund for answering and paying, and shall be charged and chargeable with the payment of so much and such part of the said second-mentioned sum of £—— as shall be in the hands of the said A. B., and the interest due and to become due for that sum (*a*).

(*a*) "And that, as between the different funds, the life estate of the said A. B. in the said manors and hereditaments by these presents and the said indenture of release herewith conveyed, bearing even date, shall be the primary fund for the payment of the said trust monies and interest: Provided always, and all, or any, or either of the provisions hereinbefore contained, creating or for creating a lien on the life estate of the said A. B., shall or may be released as to all or any part of the trust property by the said C. D., notwithstanding her coverture; and after such release, and as far as such release shall extend, the life estate of the said A. B. shall be released and discharged of and from such lien, anything hereinbefore contained to the contrary notwithstanding."

LXXVII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if at any time the said A. B. shall by reason of his entering into any trade or speculation become insolvent, or a fiat of bankrupt shall be taken out against him by reason of his being engaged in trade and insolvent, either alone or together with any other person or persons with whom he may happen to be in partnership, and he shall thereupon be duly found and declared a bankrupt, then and in such case the several limitations hereinbefore made to him of the said several messuages &c. hereinbefore mentioned, and hereby or intended to be hereby granted and released, shall cease, determine, and be utterly void; and the same several messuages &c., and every part thereof, shall in such case immediately thereupon go to the person or persons next beneficially entitled in remainder under the limitations hereinbefore contained, in the same manner and for the same estates as if the said A. B. was dead, without prejudice nevertheless to any lease or leases, demise or demises which previous to such cesser or determination shall have been granted or demised of the same premises, or any part thereof, in pursuance of the powers hereinafter for that purpose contained, and also without prejudice to the right of exercising the said powers of appointment, or any of them. And it is hereby further declared and agreed by and between the parties to these presents, that the cesser or determination of the estate or estates of the said A. B., by force and virtue of the proviso hereinbefore contained, shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to the children of the said A. B. and C. D., or any other person or persons, but that the remainders limited to the said E. F. and G. H., and their heirs, during the life of the said A. B., shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise; and that immediately from and after such cesser or determination, and during the suspension and contingency of such their expectant remainders, the said E. F. and G. H., their heirs and assigns, shall receive, pay, and apply the rents and profits of the said premises which would belong to the said A. B. if such cesser or determination

To determine husband's life interest, if he enters into trade and becomes insolvent. (In settlement of real estate).

had not taken place, unto the person or persons, for the intents and purposes, and in the manner to, for, and in which the same rents and profits would be or would have been payable or applicable respectively under or by virtue of the limitations hereinbefore contained, in case the said A. B. was actually dead. Provided also, and in case such bankruptcy shall happen during the coverture of the said C. D. by the said A. B., then and in that case the rents and profits of the said messuages, lands, and hereditaments hereby settled or intended so to be, which shall become due and payable henceforth during the joint natural lives of the said A. B. and C. D., shall be received, retained, and taken by the said E. F. and G. H., and the survivor of them, and his heirs, and be held in trust for the said C. D., for her sole use, separate and apart from and exclusive of the said A. B., so and in such manner that the same may not be under his control, nor subject or liable to his debts, contracts, forfeitures, or engagements.

For ceasing annuity limited for wife's jointure in certain events specified, and for cesser of a term for securing same annuity as to some part of lands, and of attendancy of the same term as to other part of lands, with indemnity to persons paying money to trustees, and provisions for investment of same upon certain trusts.

LXXVIII. Provided always, and notwithstanding all or any of the uses or trusts hereinbefore expressed, declared, and contained, it is hereby declared and agreed by and between the parties to these presents, that in case the heirs, executors, administrators, or assigns of the said A. B. shall at any time after the death of the said A. B., and in the event that he shall die in the lifetime of the said C. D., well and truly pay or cause to be paid to the said C. D., or her assigns, the sum of £—— of lawful money of Great Britain, in lieu of the said annuity or yearly rent-charge of £——; or if the said A. B. or his assigns shall at any time during his lifetime well and truly pay or cause to be paid to the trustee or trustees for the time being of the said term of ninety-nine years the sum of £—— of like lawful money, to be held by the same trustee or trustees in manner and upon the trusts hereinbefore expressed and declared or referred to concerning the same; or if the said A. B. or his assigns shall in his lifetime, with the consent and approbation of the said C. D. his intended wife, and of the trustee or trustees for the time being of the said term of ninety-nine years, and to his and her or their satisfaction, secure or cause to be se-

cured to the said C. D. one clear annuity or yearly sum of £——, to commence on the death of the said A. B., and continue during the life of the said C. D., either by charging the same on freehold, copyhold, or leasehold estates of adequate value, or by money invested in government or on real securities, then and in any or either of the said cases, and also on payment of all arrears (if any) of the said annuity or yearly rent-charge of £——, and the costs, charges, and expenses of and attending the trusts of the said term of ninety-nine years, and also subject and without prejudice to the sale or sales, mortgage or mortgages (if any) which shall have been previously made under or by virtue of and pursuant to the trusts hereinbefore expressed and declared of the said term of ninety-nine years, the said annuity or yearly rent-charge of £—— hereby limited to the use of the said C. D., shall cease and be void to all intents and purposes; and then also as to such and so many of the messuages &c. comprised in the said term of ninety-nine years as shall not have been previously sold or mortgaged as aforesaid, the then residue of the same term shall cease and be void to all intents and purposes; and as to such and so many of the same messuages, &c. as shall have been previously mortgaged and not sold, the then residue of the same term shall, on the request and at the costs and charges of the said A. B., his heirs or assigns, be assigned to a trustee or trustees of the nomination of the said A. B., his heirs or assigns, discharged of and from all the trusts hereby declared of the same term which shall then remain unperformed. And it is hereby further declared and agreed by and between the parties to these presents, that the person or persons who shall pay the said sum of £—— to the trustee or trustees for the time being of the said term of ninety-nine years, shall not be obliged to see the application of the same sum of £——, or be answerable or accountable for the misapplication or nonapplication of the same, and that the receipt of the same trustee or trustees for the said sum of £—— shall be a good and effectual discharge to the person or persons who shall pay the said sum of £——. And it is hereby further declared and agreed by and between the parties to these presents, that the said sum of £——,

person or persons by whom or whose husband default or failure shall be made, or any offence committed in all or any or either of the particulars hereinbefore mentioned, being a tenant or tenants for life, was or were actually dead, or being a tenant or tenants in tail, was or were actually dead without issue inheritable to his, her, or their estate or estates respectively charged; nevertheless and subject and without prejudice to any appointment or appointments by way of lease or demise, which shall be made before such cesser or determination of the estate or estates of the same person or persons respectively, by virtue of the power hereinafter given or contained for that purpose. Provided also, and my will further is, that the cesser or determination of the estate of any tenant for life, by force of the proviso hereinbefore contained, shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to his, her, or their son or sons, daughter or daughters, or any other person or persons, but that the remainders limited to the said A. B. and C. D., their heirs and assigns, during the life of such tenant for life, shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise; and that immediately from and after such cesser or determination of such preceding estate for life, and during the suspense and contingency of such expectant remainder, the said A. B. and C. D., their heirs and assigns, shall receive, pay, and apply the rents and profits of the same hereditaments and premises which would belong to such tenant for life if such cesser or determination had not taken place, unto the person or persons, and for the intents and purposes, and in the manner to, for, and in which the same rents and profits would be or would have been payable and applicable under and by virtue of the limitations hereinbefore contained, in case such tenant or tenants for life was or were actually deceased; so that immediately from and after such cesser or determination, the issue of such tenant for life, entitled for the time being under the limitations aforesaid to the said hereditaments and premises in remainder immediately expectant on the decease of such tenant for life, may be entitled to the rents and profits of the said hereditaments and premises, for his

without prejudice to leases made before forfeiture.

Such cessers not to prejudice contingent remainders.

and their own proper use and benefit respectively, during the life of the parent, as if such parent were dead; and in case no such issue shall be in existence, then during the vacancy or contingency of such issue, the person next entitled for the time being, under the limitations aforesaid, to a vested remainder in the said hereditaments and premises expectant on the decease of such tenant for life, and failure of issue of the body of her children inheritable as aforesaid, shall and may be entitled to the said rents and profits, for his, her, and their proper use and benefit respectively, without any exclusion of or prejudice to the estate, interest, or right of any such children or issue afterwards coming into existence from or after the time of birth of such children or issue respectively.

For cesser of estate, if devisees should refuse to take and use name and arms, or should cut timber or commit waste, or should not lay out a yearly sum in repairs: such cesser however not to prejudice contingent remainders. (In wills).

LXVII. Provided also, and my will further is, that in case any such person or persons, or any such tenant for life or in tail male, or in tail, or, being a female or females, her or their husband or husbands, shall, for the space of two years next after the time hereby appointed for that purpose, refuse or neglect to take and use my said surname and arms, or to apply for such Act of Parliament or licence as aforesaid, or shall at any time during his, her, or their life or lives discontinue or cease to use such surname and arms; or in case any person or persons, being tenant for life or in tail under this my will, or her or their husbands, should cut down any timber, or other trees likely to become timber, or planted for ornament, and which are growing or which shall grow on all or any part of the said hereditaments, except for the purpose of erecting or repairing any buildings upon the estates hereby devised or assumed to be devised, or making or repairing any temporary fences, or permanent hedges, fences, or gates thereon, and except in taking down such trees as shall be injurious to the growth of other trees, or such trees (not being ornamental trees) as are not likely to improve, or which may be injured by longer standing, or such trees as may require to be taken down in furtherance of any improvements on my said estates; or shall apply any trees whatsoever taken down for any other purpose than such repairs as aforesaid, or for raising money to be applied

in purchasing lands to be settled to the subsisting uses of this my will, as far as relates to the said estates hereby devised, or shall commit any manner of wilful waste, spoil, or destruction on all or any part of the said estates; or in case any such tenant for life or in tail as aforesaid, when in such actual possession or receipt of the rents as aforesaid, or the guardians, husbands, or trustees of the same persons respectively, until they shall severally be in such possession and receipt, shall not, yearly and every year, during the continuance of the estates of the same persons respectively, lay out £—— at least in or about the repairs, or if no repairs are wanting, then in the decorations and ornamenting of the said capital mansion-house called S. H., and the buildings, gardens, and pleasure-grounds thereto belonging, and in repairing and keeping in good and neat order and condition the dormitory belonging to me in or adjoining the church of S. B. aforesaid, then and in any of the said cases the estate or estates of every person who or whose guardians, trustees, or husbands, should so refuse or neglect as aforesaid, shall cease, determine, and become void, as to my said wife, as if determined by her death or second marriage, and as to any other person being tenant for life, as if he or she were then actually dead, and as to any person being tenant in tail, as if he or she were then actually dead without issue inheritable to his or her estate tail under this my will; But my will further is, that the cesser or determination of the estate of any tenant for life by force of the present proviso shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to his, her, or their son or sons, daughter or daughters, or any other person or persons; but that the remainder limited to the said A. B. and C. D., their heirs and assigns, during the life of each such tenant for life, shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise; and that immediately from and after such cesser or determination of such preceding estate for life as aforesaid, and during the suspense and contingency of such expectant remainder, the said A. B. and C. D., their heirs and assigns, shall receive, pay, and apply the rents and profits of the hereditaments and

premises which would belong to such tenant for life if such cesser or determination had not taken place, unto the person or persons, and for the intents and purposes, and in the manner to, for, and in which the same rents and profits would be or would have been payable and applicable under and by virtue of the limitations hereinbefore contained, in case such tenant or tenants for life was or were actually dead, so that immediately from and after such cesser or determination, any tenant for life in remainder, or the issue of such tenant for life entitled for the time being under the limitations and provisoes aforesaid, may be entitled to the rents and profits of the said hereditaments and premises, as if the preceding tenant for life committing such breach of the conditions aforesaid were actually dead.

For suspending the life interest of testator's daughter in a money-fund, on her cohabiting or maintaining any intercourse with her present husband. (In wills).

LXVIII. Provided always, and my will is, that if the said A. B. shall at any time or times cohabit or hold any intercourse of any kind whatsoever, either directly or indirectly, with her husband the said C. B., or should, either directly or indirectly, pay, advance, give, or contribute any monies, necessaries, or effects, to the said C. B., or for his benefit, or on his account, then and from time to time as often as the same shall happen, and during so long time as the said A. B. shall continue so to cohabit or hold intercourse with her said husband, or to pay, advance, give, or contribute any monies, necessaries, or effects as aforesaid, the interest, dividends, and income of the said sum of £—— stocks, funds, and securities, shall, from the last half-yearly day of payment thereof preceding any such act, and until the next half-yearly day of payment after the said A. B. shall discontinue the same, cease to be payable to the said A. B., and shall fall into and become part of the residue of my personal estate hereinbefore bequeathed; And that my said trustees and trustee for the time being shall, from time to time, have the discretion of suspending and again renewing the payment of the said interest, dividends, and income, upon such evidence as they shall think fit, or upon their own personal information, without any obligation on the said trustees or trustee to communicate to the said A. B., or any other person or persons whomsoever, their grounds or reasons

for any such suspension, or upon what evidence or information the same shall have been determined; And it is also my will, and I hereby declare, that if the said A. B. shall at any time hereafter have any issue by her said husband, that then and in such case the right of the said A. B. to receive the dividends, interest, and income of the said sum of £—— stocks, funds, and securities, shall, for the benefit of the other person or persons entitled thereto under this my will, cease and determine, to all intents and purposes, and the same shall become payable, and be paid, assured, and transferred, in the same manner as if the said A. B. was actually dead.

For ceasing trusts in favour of testator's niece, if she shall intermarry with any person of the kindred of A. B. deceased. (In wills).

LXIX. Provided always, and I do hereby declare my will to be, that the trusts hereinbefore declared for the benefit of my said niece A. B. are upon this express condition, that she shall not at any time intermarry with any person of the kindred or blood of my late husband; and that if she shall at any time intermarry with any such person, then and in such case the trusts hereinbefore declared in favour of the said A. B. during her life, and the power of appointment hereinbefore given to her, shall thereupon cease, determine, and become void; and then and in that case it is my will, and I do hereby direct that my said trustees and trustee for the time being do and shall thenceforth stand possessed of and interested in all and singular the said trust monies and effects, upon and for the same trusts as the same would then be subject to under this my will, in case the said A. B. were then dead without having made any such appointment; but nevertheless the said A. B. shall in that event be considered as one of the children of my brother C. B., entitled to a share or shares under the trusts hereinbefore contained.

For ceasing estate of younger son, becoming an elder or only son. (In wills).

LXX. Provided always, and in case any such younger son shall in the lifetime of his said father and mother, or of either of them, become an eldest or only son by reason of the death of the elder son or sons, and the failure of his or their issue, then and in that case the estate or estates of each such younger son becoming an eldest or only son shall cease in the same manner, and for the benefit of the same persons

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That son of intended marriage becoming heir apparent, shall be excluded from any part of a sum of money.

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That in case any person entitled to any estate of freehold or inheritance in possession under present will, should also become entitled to any estate of freehold or inheritance in a certain other estate called A., then estate limited by present will shall cease in favour of persons in remainder, but with option

for such person to retain the estate under the will upon conveying the other estate to the persons who would have taken under the proviso for cesser, in case it had been called into effect. (In wills).

or predecessor, or of the said D. D. my cousin, then and in that case, and as often as the same shall happen, and unless such option as hereinafter mentioned should be declared and made, and also carried into effect by a conveyance within the time hereinafter limited in that behalf, the estate of each person so for the time being entitled shall, as to my freehold and copyhold estates, cease, determine, and be void, as if the person becoming so entitled had departed this life without issue inheritable to his estate; and if such event should happen before the end of twenty-one years from my death, or from the decease of the survivor of them my said sister, the said Sir C. D., and D. D., then as to my leasehold estates and heir-looms, as if such person had departed this life under the age of twenty-one years, and without leaving issue lawfully begotten living at his death; and my manors and other hereditaments, leasehold estates, and heir-looms, to which each such person shall for the time being become so entitled, shall remain to the person or persons to whom the same would have devolved or remained in case the person so for the time being and from to time entitled had actually departed this life, as to my said freehold and copyhold estates, without issue inheritable to his estate; and as to my leasehold estates and heir-looms, as if such person had departed this life under the age of twenty-one years, and without leaving issue living at his death, and for the same or the like estates, and with the same or the like remainders and limitations over, as if the estate of the person so becoming entitled to all or such part as aforesaid of my estate, and also all or such part as aforesaid of the A. estate, were actually determined, and were as to such leasehold estates determined in due time to give effect to the next estate or interest in remainder over or in succession as aforesaid. And by way of recommendation, and not of trust or condition, I recommend my said cousin D. D., as far as it may be in his power, to make such arrangements as will most effectually keep my estate separate and distinct in ownership and enjoyment from the A. estate. Provided always, and if the person becoming entitled to the A. estate, or part thereof to the value aforesaid, should declare his option to retain my estate, and to substitute the A. estate by settling the same to the uses hereinbefore in the proviso of cesser

and limitation over intended to be declared of my estate, then and in that case, on the execution of a settlement, or on obtaining an act of parliament for that purpose, as the circumstances of the case may require, the person so making such option shall, if such option and settlement be made within one year next after the person so entitled to the A. estate shall become entitled thereto, be discharged from the proviso of cesser and limitation over hereinbefore contained.

That in case any child of the marriage to whom an estate tail is limited shall die in the lifetime of the parents, or either of them, leaving children, then the estate tail of that child shall cease, and the share of that child shall be to the use of the children of that child equally as tenants in common in tail, with cross remainders among them.

LXXIV. Provided always, and (subject and without prejudice to any appointment or appointments which shall be made under or by virtue of and pursuant to the power of appointment hereinbefore contained) in case each or either of the children of the said intended marriage, to whom estates tail are hereby limited, shall depart this life in the lifetime of both or either of them the said A. B. and C. D. his intended wife, leaving a child or children living at his or her death, then and in that case the estate or estates tail of each child respectively so dying, of and in his or her original share, and also any additional or surviving share or shares of and in the said messuages &c. hereby released, or otherwise assured or intended so to be, shall cease on his or her death; and the share or shares of each child so dying shall, from and after his or her death, (subject nevertheless and without prejudice as aforesaid, and also subject and without prejudice to the estate or estates for the life of the said A. B. and C. D. respectively), remain, continue, and be to the use of his or her child if only one, or children if more than one, living at his or her death, to be equally divided between the same grandchildren if more than one, share and share alike as tenants in common, and not as joint tenants, and the heirs of the body or several and respective bodies of the same grandchild or grandchildren respectively lawfully issuing; and on failure of the issue of any one or more of the same grandchildren, in case there shall be more than one, then the original part or share, parts or shares, of and in the said messuages, &c. which shall belong to the grandchild or grandchildren of whose issue there shall be such failure, and also as to the part or share, or several and respective parts or shares, of and in the same messuages, &c. which from time

to time shall belong to, or vest in or be taken by, the same grandchild or grandchildren respectively, or his, her, or their issue under this present limitation of cross remainders, shall belong to and vest and remain in the brother or sister, or brothers or sisters of the same grandchild or grandchildren, to be equally divided between or among the same brothers and sisters, if more than one, share and share alike as tenants in common, and not as joint tenants, and the heirs of the body or several and respective bodies of the same brother or sister, or brothers and sisters respectively, lawfully issuing; and on failure of the issue of all the children of each child of the said intended marriage, so dying as aforesaid in the lifetime of the said A. B. and C. D., his intended wife, or either of them, then the original, and also any additional share or shares of each such child so dying, shall go and remain in the same manner, and to the same uses, and under and subject to the same limitations over, and cross remainders, as the same share or shares is or are hereinbefore limited to go or remain on the failure of the issue of the child so dying, or would have gone or remained in case these present provisions had not been introduced.

That a son or sons who, during life of parents or afterwards, and before attaining twenty-one, shall take estate in premises, either in possession, or immediately expectant on death of his father, shall so take upon terms of waiving in favour of his brothers or sisters a provision made by a prior deed, viz. marriage articles.

LXXV. Provided always, and it is hereby declared and agreed, by and between all the said parties to these presents, as far as they respectively are interested, to be the true intent and meaning of them and of these presents, that every son or sons of the said A. B. and C. his wife, who during the life of his father and mother, or the survivor of them, or afterwards, and before he shall attain his age of twenty-one years, shall take an estate in tail or other estate or interest in the said messuages, &c. or any of them, either in possession or immediately expectant on the death of his father the said A. B., under the uses hereinbefore declared, shall take such estate tail or other estate or interest, upon the terms only that he and they shall waive and release all his and their right and interest in and to the provision made for him or them under and by virtue of an agreement under the hand and seal of the said A. B., bearing date &c. and entered into by him previous to his marriage with the said C. his wife, then C. D., spinster, for settling the sum of £——

for the benefit of the children of the said A. B. and C. his wife, in favour of his or their brother and sister, or brothers and sisters in the same or the like manner, shares, and proportions as if he or they the son or sons so becoming entitled had never been born.

LXXVI. Provided always, and it is hereby declared and agreed, that in case the said A. B. shall at any time during the lifetime of the said C. D., or after her death, and while there shall be any issue of the said intended marriage, commit any act of bankruptcy on which a fiat of bankrupt shall be duly issued against him, and he shall be declared a bankrupt, or shall take the benefit of any act made or to be made for the relief of insolvent debtors, [or shall do any act with a view to assign, charge, or incumber, or anticipate (*a*) the growing payments of all or any part of the dividends, interest, and income of the said second and third mentioned sums of £—— and £——, or either of them, or the stocks, funds, and securities in or upon which the same sums or either of them shall from time to time be invested]; then and in that case the right of the said A. B. to receive the dividends, interest, and income of the same two sums, and the stocks, funds, and securities in or upon which the same shall be invested, shall for the benefit of the said C. D., or the children or issue of the said intended marriage, cease and be void to all intents and purposes, in the same manner as if the said A. B. was actually dead; and that in any or either of the said cases, the dividends, interest, and income of the same two sums of £—— and £——, and the stocks, funds, and securities in or upon which the same shall be invested, shall during the joint lives of the said A. B. and C. D., provided the said C. D. shall be living at that time, be held and applied upon trust for the sole use of the said C. D., separate and apart from and exclusive of the said A. B., and so and in such manner that the same may not be under his control, or subject or liable to his debts, bankruptcy, insol-

To determine the husband's life interest on bankruptcy, &c. in the same manner as if he were dead, with a provision for the separate use of wife during coverture, and making the husband's life interest &c. in the money a fund for answering the sums to be advanced to him under the trusts of the settlement. (In settlement of personalty). Vide Tit. VII. art. cxxxvii.

(*a*) *Qu.* whether this clause can be supported? Vide Vol. I. book iii. chap. 6. of this work.

vency, contracts, forfeitures, or engagements; and so and in such manner that the receipts of the said C. D., or any person or persons to whom she may appoint the same when due, may be good and effectual discharges for the money which shall be thereby expressed to be received; yet nevertheless so that the said C. D. may not anticipate, charge, or assign all or any part of the same dividends, interest, and income, before the same shall become due and payable; And moreover that in case the said A. B. shall be declared bankrupt, or shall take the benefit of any act for the relief of insolvent debtors, and at that time shall have all or any part of the said second-mentioned sum of £——, or the produce of the securities for the same, in his hands, then and in that case the life interest of the said A. B. of and in the said second and third mentioned sums of £—— and £——, and the stocks, funds, and securities in or upon which the same shall be invested, and also the contingent interest of the said A. B. in the principal of the same trust monies, stocks, funds, and securities, shall be a fund for answering and paying, and shall be charged and chargeable with the payment of so much and such part of the said second-mentioned sum of £—— as shall be in the hands of the said A. B., and the interest due and to become due for that sum (*a*).

(*a*) "And that, as between the different funds, the life estate of the said A. B. in the said manors and hereditaments by these presents and the said indenture of release herewith conveyed, bearing even date, shall be the primary fund for the payment of the said trust monies and interest: Provided always, and all, or any, or either of the provisions hereinbefore contained, creating or for creating a lien on the life estate of the said A. B., shall or may be released as to all or any part of the trust property by the said C. D., notwithstanding her coverture; and after such release, and as far as such release shall extend, the life estate of the said A. B. shall be released and discharged of and from such lien, anything hereinbefore contained to the contrary notwithstanding."

LXXVII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if at any time the said A. B. shall by reason of his entering into any trade or speculation become insolvent, or a fiat of bankrupt shall be taken out against him by reason of his being engaged in trade and insolvent, either alone or together with any other person or persons with whom he may happen to be in partnership, and he shall thereupon be duly found and declared a bankrupt, then and in such case the several limitations hereinbefore made to him of the said several messuages &c. hereinbefore mentioned, and hereby or intended to be hereby granted and released, shall cease, determine, and be utterly void; and the same several messuages &c., and every part thereof, shall in such case immediately thereupon go to the person or persons next beneficially entitled in remainder under the limitations hereinbefore contained, in the same manner and for the same estates as if the said A. B. was dead, without prejudice nevertheless to any lease or leases, demise or demises which previous to such cesser or determination shall have been granted or demised of the same premises, or any part thereof, in pursuance of the powers hereinafter for that purpose contained, and also without prejudice to the right of exercising the said powers of appointment, or any of them. And it is hereby further declared and agreed by and between the parties to these presents, that the cesser or determination of the estate or estates of the said A. B., by force and virtue of the proviso hereinbefore contained, shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to the children of the said A. B. and C. D., or any other person or persons, but that the remainders limited to the said E. F. and G. H., and their heirs, during the life of the said A. B., shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise; and that immediately from and after such cesser or determination, and during the suspension and contingency of such their expectant remainders, the said E. F. and G. H., their heirs and assigns, shall receive, pay, and apply the rents and profits of the said premises which would belong to the said A. B. if such cesser or determination

To determine husband's life interest, if he enters into trade and becomes insolvent. (In settlement of real estate).

had not taken place, unto the person or persons, for the intents and purposes, and in the manner to, for, and in which the same rents and profits would be or would have been payable or applicable respectively under or by virtue of the limitations hereinbefore contained, in case the said A. B. was actually dead. Provided also, and in case such bankruptcy shall happen during the coverture of the said C. D. by the said A. B., then and in that case the rents and profits of the said messuages, lands, and hereditaments hereby settled or intended so to be, which shall become due and payable henceforth during the joint natural lives of the said A. B. and C. D., shall be received, retained, and taken by the said E. F. and G. H., and the survivor of them, and his heirs, and be held in trust for the said C. D., for her sole use, separate and apart from and exclusive of the said A. B., so and in such manner that the same may not be under his control, nor subject or liable to his debts, contracts, forfeitures, or engagements.

For ceasing annuity limited for wife's jointure in certain events specified, and for cesser of a term for securing same annuity as to some part of lands, and of attendancy of the same term as to other part of lands, with indemnity to persons paying money to trustees, and provisions for investment of same upon certain trusts.

LXXVIII. Provided always, and notwithstanding all or any of the uses or trusts hereinbefore expressed, declared, and contained, it is hereby declared and agreed by and between the parties to these presents, that in case the heirs, executors, administrators, or assigns of the said A. B. shall at any time after the death of the said A. B., and in the event that he shall die in the lifetime of the said C. D., well and truly pay or cause to be paid to the said C. D., or her assigns, the sum of £—— of lawful money of Great Britain, in lieu of the said annuity or yearly rent-charge of £——; or if the said A. B. or his assigns shall at any time during his lifetime well and truly pay or cause to be paid to the trustee or trustees for the time being of the said term of ninety-nine years the sum of £—— of like lawful money, to be held by the same trustee or trustees in manner and upon the trusts hereinbefore expressed and declared or referred to concerning the same; or if the said A. B. or his assigns shall in his lifetime, with the consent and approbation of the said C. D. his intended wife, and of the trustee or trustees for the time being of the said term of ninety-nine years, and to his and her or their satisfaction, secure or cause to be se-

cured to the said C. D. one clear annuity or yearly sum of £——, to commence on the death of the said A. B., and continue during the life of the said C. D., either by charging the same on freehold, copyhold, or leasehold estates of adequate value, or by money invested in government or on real securities, then and in any or either of the said cases, and also on payment of all arrears (if any) of the said annuity or yearly rent-charge of £——, and the costs, charges, and expenses of and attending the trusts of the said term of ninety-nine years, and also subject and without prejudice to the sale or sales, mortgage or mortgages (if any) which shall have been previously made under or by virtue of and pursuant to the trusts hereinbefore expressed and declared of the said term of ninety-nine years, the said annuity or yearly rent-charge of £—— hereby limited to the use of the said C. D., shall cease and be void to all intents and purposes; and then also as to such and so many of the messuages &c. comprised in the said term of ninety-nine years as shall not have been previously sold or mortgaged as aforesaid, the then residue of the same term shall cease and be void to all intents and purposes; and as to such and so many of the same messuages, &c. as shall have been previously mortgaged and not sold, the then residue of the same term shall, on the request and at the costs and charges of the said A. B., his heirs or assigns, be assigned to a trustee or trustees of the nomination of the said A. B., his heirs or assigns, discharged of and from all the trusts hereby declared of the same term which shall then remain unperformed. And it is hereby further declared and agreed by and between the parties to these presents, that the person or persons who shall pay the said sum of £—— to the trustee or trustees for the time being of the said term of ninety-nine years, shall not be obliged to see the application of the same sum of £——, or be answerable or accountable for the misapplication or nonapplication of the same, and that the receipt of the same trustee or trustees for the said sum of £—— shall be a good and effectual discharge to the person or persons who shall pay the said sum of £——. And it is hereby further declared and agreed by and between the parties to these presents, that the said sum of £——,

when and if the same shall be paid as aforesaid, in the lifetime of the said A. B., shall be invested at interest in manner hereinbefore mentioned concerning the money to arise from any sale or sales to be made as aforesaid, pursuant to the power in that behalf hereinbefore contained; and the interest arising from the same sum of £——, and the accumulations (if any) of the interest of the same sum, shall, during the joint lives of the said A. B. and C. D., be invested in like manner, and the increase of the same sum of £——; and that in case the said C. D. shall die in the lifetime of the said A. B., then on the death of the said C. D., the stocks, funds, and securities, in or upon which the said sum of £——, and the accumulations of the interest thereof, shall be invested, shall be transferred and assigned to the said A. B., his executors, administrators, or assigns; and that in case the said A. B. shall die in the lifetime of the said C. D., then on the death of the said A. B., the same stocks, funds, and securities shall, with all convenient speed, be converted into money, and that £——, part of the produce of the same stocks, funds, and securities, shall be paid to the said C. D., her executors, administrators, or assigns, and the residue of the same produce shall be paid to the executors, administrators, or assigns of the said A. B., as part of his personal estate.

That unless infant feme covert concur when of age in all acts and deeds for confirming settlement, all her estates shall cease.

LXXIX. And it is hereby agreed and declared by and between the said parties to these presents, that in case the said C. D. shall, at any time after she shall attain her age of twenty-one years, and whether she shall be sole or married at that time, refuse, neglect, or decline, by the space of one calendar month after request in writing to be made by the said E. F., G. H., and I. K. [*trustees*], or the survivors and survivor of them, his executors or administrators, to make, do, and execute, or join and concur in making, doing, and executing all such acknowledgments, acts, deeds, and other assurances whatsoever as by the trustee or trustees for the time being, or his or their counsel in the law, shall be deemed requisite or expedient for vesting and assuring the said messuages &c. hereby released or otherwise assured, or intended so to be, and in part described to be situate in the

county of E., unto and in the said E. F., G. H., and I. K., their heirs and assigns, to the uses, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinbefore and hereinafter expressed and declared of and concerning the same messuages &c. respectively, then and in that case the life interest of the said C. D. of and in the sum and sums of money hereby assigned by the said A. B., or intended so to be; and also of and in the money to arise and be produced by or from the sale or sales to be made as aforesaid of the said lands situate in the said county of E. as aforesaid; and also the estate for life limited to her of and in all the lands and hereditaments situate in the county of W. as aforesaid, shall cease, determine, and be void to all intents and purposes whatsoever, for the benefit of the person or persons who are to take or be entitled to the same lands, hereditaments, and money, upon and after the decease of the said C. D., and as fully and effectually, to all intents and purposes, as if the said C. D. was actually dead, any thing hereinbefore contained to the contrary in anywise notwithstanding.

That unless infant shall, on attaining twenty-one, do all acts for giving effect to the settlement made of her own property, she shall forfeit all benefit under the present settlement.

LXXX. And lastly, it is hereby declared and agreed by and between the parties to these presents, as far as they respectively are interested, that unless the said C. D. do and shall, when and as soon as she shall attain her age of twenty-one years, or as soon thereafter as she shall, by three calendar months' notice in writing, be requested by the said A. B., or the trustee or trustees for the time being of these presents, make, execute, and concur in all such acts, deeds, and assurances as by the trustee or trustees for the time being of these presents, or his or their counsel in the law, shall be thought necessary and expedient for confirming, giving effect to, and fully establishing the settlement made or forthwith intended to be made of the property of the said C. D., by the second-mentioned indenture bearing even date with these presents, according to the true intent and meaning of the same settlement and of the parties thereto, then and in such case the said C. D. shall be excluded from all benefit under this settlement, and thenceforth the uses, trusts, limit-

ations, and powers hereinbefore limited, given, and reserved to her, shall cease, determine, and be void, for the benefit of the same persons, and in the same manner in all respects as if the said C. D. had actually departed this life.

That on husband attaining the age of —— years, and executing power of jointure pursuant to covenant, part of rent-charge shall cease, and premises be exonerated from term for securing same.

LXXXI. Provided always, and it is hereby further declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that when and as soon as the said A. B. shall have attained his age of —— years, and shall have executed his said power of jointuring in favour of the said C. D. his intended wife, by appointing to her an annual sum or annual sums to the amount of £—— a year or upwards, pursuant to his said power, and his covenant in that behalf hereinbefore contained, then and in that case, and from thenceforth, £—— a year, part of the said annual sum or yearly rent-charge of £—— hereby provided for the said C. D., shall cease and determine; and the said manors and other hereditaments hereby charged with the payment of the same annual sum or yearly rent-charge of £——, shall be discharged of and from £—— a year, part of the same annual sum or yearly rent-charge of £——; and that when and as soon as the said A. B. shall have attained his age of —— years, and shall have executed his said power of jointuring in favour of the said C. D. his intended wife, by appointing to her an annual sum or rent-charge or several annual sums or rent-charges, to the amount of £—— a year, and the said A. B. shall have departed this life, then and from thenceforth the whole or (as the case may require) the residue of the said annual sum or yearly rent-charge of £—— hereby provided for the said C. D., shall cease and determine; and the said manors and other hereditaments hereby charged with that annual sum or yearly rent-charge shall be discharged of and from the same, any thing hereinbefore contained to the contrary in anywise notwithstanding. And it is hereby further provided, declared, and agreed by and between the parties to these presents, that when and as soon as the said A. B. shall have attained his age of —— years, and shall have executed his said power in that behalf, by charging all or any part of the sum of £—— on the

manors and hereditaments subjected to his said power, and pursuant to his covenant hereinbefore contained in that behalf, then and in that case the manors and hereditaments comprised in the said term of one thousand years hereby created shall be exonerated and discharged of and from so much of the said sum of £—— directed to be raised under the trusts of that term, as shall be raisable under the appointment to be so made by the said A.B.; so that the manors and other hereditaments comprised in the said term of one thousand years may be exonerated and discharged of and from the whole or (as the case shall require) part of the said sum of £——; that is to say, a part of the said sum of £——, in case any part of a sum to that amount shall be appointed, and all the said sum of £——, in case the full sum of £—— shall be so appointed. (Vide Art. LXXXII.)

That when husband shall pay a sum of money to trustees, lands now charged with that sum shall be exonerated. (In continuation of the last form).

LXXXII. Provided also, and if the said A. B., his heirs, executors, administrators, or assigns, shall at any time hereafter, and either before or after he shall attain the age of —— years, pay or cause to be paid to the said E. F. and G. H., or the survivor of them, his executors or administrators, or the trustee or trustees for the time being of these presents, the sum of £—— of lawful money of Great Britain, to be held upon the same trusts as are hereinbefore declared of and concerning the said sum of £——, directed to be raised under the trusts of the said term of one thousand years, and either with or without a trust in favour of the said A. B., his executors, administrators, and assigns, in the event of his exercising his said power of appointment by charging the said sum of £—— on the hereditaments subjected to the said power, and also a trust for the investment of such £—— on government or real securities, and to entitle the said A. B. to the income which shall become due during his life, then and in that case, from and after such payment shall be made, and a receipt for the said sum of £—— to be so paid shall be endorsed on these presents, (and which receipt shall be conclusive evidence that such payment hath been made), the said manors and other hereditaments comprised in the said term of one thousand years shall be exonerated and discharged of and from the payment of the said sum of

£—— hereinbefore directed to be raised under the trusts of that term, anything hereinbefore contained to the contrary in anywise notwithstanding.

That if wife shall survive and marry again, there being a child, children, or issue of first marriage living, a given sum shall be taken out of the trust-monies, and paid as if she had been deceased at the time of such second marriage.

LXXXIII. Provided always, and it is hereby declared and agreed by and between the said parties to these presents, and the said A. B. and C. D. [*husband and wife*], according to their respective rights and interests, do hereby respectively direct and appoint, that in case the said C. D. shall survive the said A. B., and shall afterwards intermarry with any other person while there shall be any child or children or other issue of the said intended marriage, the said sum of £——, or so much and such part thereof as shall have been lent or advanced to the said A. B., or, as the case shall require, £—— part of the said trust monies, or so much thereof as with the money to be lent or advanced to the said A. B. will make up the sum of £——, shall be set apart and appropriated for the benefit of the children, if any, of the said intended marriage, and be held in the same manner, and upon, under, and subject to the same or the like trusts, powers, provisions, and regulations in all respects, and to be vested and paid or payable at the same times as if the said C. D. had actually departed this life at the time of such second marriage, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

That if feme covert attain twenty-one, and she and her husband do not within a limited time convey all her interest in certain premises to wife's father, a sum of money covenanted to be paid by him shall be held in trust for him; and in case of wife's death under twenty-one, her children to take upon same terms.

LXXXIV. Provided always, and if the said C. B. [*wife*] shall attain her age of twenty-one years, and she and the said A. B., her intended husband, if then living, and each or either of them, shall not, within six calendar months next after request in that behalf to be made by the said C. D., his heirs, executors, administrators, or assigns, and at his or their costs and charges in all things, make, do, execute, and concur in all such acts, deeds, and assurances whatsoever, for the purpose of conveying and assuring unto and to the use of the said C. D., his heirs and assigns, or to such uses as he or they shall appoint, all and every the share and shares, present and remote, absolute and contingent, or eventual, of her the said C. B., of, in, and to all and singular the manors, messuages, lands, tenements, and hereditaments,

and parts and shares of manors &c., which are comprised in the said several hereinbefore recited indentures of settlement and marriage articles respectively, and each and every of them, or to which she shall or may be entitled under any appointment to her or in her favour, in such manner and by such means as by the said C. D., his heirs, executors, administrators, or assigns, shall be reasonably devised or advised and required, then and in that case, and from and immediately after the expiration of six calendar months, to be computed as aforesaid, (provided the said C. B. shall be then living), the said sum of £——, hereby covenanted to be paid by the said C. D., his heirs, executors, or administrators, and the stocks, funds, and securities in or upon which that sum shall have been invested, shall be held upon trust for the said C. D., his executors, administrators, and assigns; And further, that if the said C. B. shall depart this life under the age of twenty-one years, or afterwards, before the contingency shall have arisen on which the said last-mentioned trust sum of £——, and the stocks, funds, and securities in or upon which that sum shall have been invested, shall vest in the said C. D., his executors, administrators, or assigns, under the trusts hereinbefore contained in that behalf, then and in that case each and every child or other issue of the said intended marriage, who shall have, receive, or take all or any part or share of and in the same sum of £—— stocks, funds, and securities, shall have, receive, and take the same, upon the terms of conveying and assuring unto and to the use of the said C. D., his heirs and assigns, or to such uses as he or they shall appoint, the part or share, parts or shares, if any, of and in the same manors, messuages, lands, tenements, and hereditaments, and parts and shares of manors &c. to which the same child or issue may be then entitled; otherwise the share or shares of and in the same sum of £—— stocks, funds, and securities, which would have belonged to such child or issue respectively, shall, as far as such child or issue respectively shall be interested therein, (but not so as to defeat the limitations over), be held in trust for the said C. D., his executors, administrators, and assigns.

That all persons taking any benefit under the will shall submit all disputes between themselves and the executor of testatrix's husband to arbitration, and for ceasing their estates on refusal (*a*). (After trusts for separate use of testatrix's daughters for life, and then to their children and issue absolutely—in moieties).

LXXXV. And whereas I am, jointly with my son A.B., an executrix of the last will and testament of my late husband, C. B., of &c., deceased: And whereas my said son A. B. has been the acting executor under the said will, and in the administration and disposition of the property of my said late husband, it has been found expedient to depart in some instances from the directions contained in the said will, as to the getting in and investment of the same property, and the same was done with my consent and concurrence, and with a view only to the convenience and benefit of the family of my said late husband; Now therefore I do declare my will to be, that neither of them the said C. D. and E. F. respectively, or their respective husbands or children, or any other person who shall become entitled to any benefit under this my will, shall bring, sue, or prosecute any action or suit at law or in equity, or otherwise howsoever, against my said son A. B., his heirs, executors, or administrators, for or on account or in respect of the management or disposition of the property or effects of my said late husband by my said son A. B., or any matter, cause, or thing relating thereto; And that if any dispute or difference should arise between any or either of them my said daughters, C. D. and E. F., or their respective husbands or children, or any other persons who shall become entitled to any benefit under my said will, and my said son A. B., his executors or administrators, touching or concerning the management or disposition of the property or effects of my said late husband, or any matter or thing relating thereto, or touching or concerning the accounts of my said son A. B. as acting executor of my said late husband, that then the person or persons who shall be so in difference or dispute with the said A. B., his executors or administrators, shall refer the matter in dispute to two in-

(*a*) The testatrix's son being the acting executor of his father's will, (and his mother the executrix), had, for the convenience of the family, suffered certain bond debts to remain out at interest, and had advanced part of the father's estate to one of his brothers, to enable him to prosecute his business, instead of converting it in the funds, as directed by the will. Litigation being apprehended on that account from the married sisters or their husbands, this provision was introduced in the mother's will, with the object of securing the son.

different persons, of the degree of barristers at law, one to be named by the person or persons who shall be so in difference or dispute as aforesaid, their executors or administrators, and the other to be named by the said A. B., his executors or administrators; and in case such two referees cannot agree on an award, then to the umpirage and arbitration of such one person as the said two referees shall appoint by any writing under their hands; the order or determination of which said referees or their umpire shall be binding and conclusive on every person taking any benefit under this my will, so as such referees shall make their award in writing under their hands, or appoint an umpire, within —— calendar months next after each respective reference to them, and so as such umpire shall make his determination in writing under his hand within —— calendar months after he shall be appointed an umpire. And my will further is, and I do hereby declare, that if any or either of them the said C. D. and E. F., or their respective husbands, or their said children or issue, (and as to such children or issue within twenty-one years next after the decease of the survivor of the said C. D. and E. F.), should neglect or refuse to comply with the conditions or directions hereinbefore contained, or any part thereof, that then and in such case the trusts hereinbefore declared for the benefit of the person or persons who or whose husbands shall so neglect or refuse as aforesaid, shall cease, determine, and become void in favour of the persons who shall be entitled next in succession, under the trusts hereinbefore declared, as to the said C. D. and E. F. respectively, as if they respectively were actually dead, and as to the said children or issue respectively, as if they respectively had departed this life, being males, under the age of twenty-one years, and without having any issue lawfully begotten living at their respective deaths, or being females, under that age, and without having been married with such consent as aforesaid. Provided always, and my will further is, that if the said A. B., his executors or administrators, should neglect or refuse to appoint a referee in any such case as aforesaid after such reference shall have been required by any person entitled to any benefit under this my will, or shall neglect or refuse to obey or conform to the

award or determination of any such referees or their umpire, touching or concerning the matters to be to them referred, that then and in such case the said trust monies, stocks, funds, and securities shall be and be considered as discharged of and from the proviso lastly hereinbefore contained in that behalf, and the said C. D. and E. F. and their respective husbands and children, or other issue, or any of them respectively, shall or may pursue any remedies against the said A. B., his executors or administrators, which they shall think fit, without prejudice to any benefit to be taken by them or any of them under this my will.

That wife's personalty, though not reduced into possession, shall become the property of husband immediately after marriage.

LXXXVI. And it is hereby agreed and declared by and between the parties hereunto, and in particular the said A. B. doth hereby consent and agree that all the money, and securities for money, and other personal property of the said A. B. (other than and except the said sum of £——), shall, immediately after the solemnization of the said intended marriage, become and be the absolute property of the said C. D., notwithstanding his death in the lifetime of the said A. B., or before he shall have obtained the actual possession of the same (*a*).

That recitals shall not be construed as stipulations on behalf of granting and conveying parties, or make them or trustees answerable.

LXXXVII. And it is hereby declared and agreed by and between all the said parties hereto, as far as they are respectively interested, that none of the recitals hereinbefore contained, though true as far as the state of the title appears or can be ascertained, shall be or be construed as a stipulation or agreement, either at law or in equity, by or on the part of the granting and conveying parties, or any of them, that the same recitals are true, so as to make the said trustees or granting or conveying parties answerable by reason or in respect of the same recitals or any of them.

That portions for children shall be in lieu and substitution of portions pro-

LXXXVIII. Provided also, and it is hereby further agreed and declared, that the portion or portions hereinbefore provided for the said younger child and children

(*a*) Vide Vol. I. book iii. chap. 6, "Of Settlements."

shall be deemed and taken in lieu and in full satisfaction of and as an equivalent for any portion or portions, sum or sums of money, or any other claim and demand which now is or which shall or may be due and payable to them respectively under and by virtue of the said recited indenture of release and settlement and will respectively, or either of them, and shall not be deemed or taken as in addition thereto, any thing hereinbefore contained to the contrary notwithstanding.

vided by a former settlement.

LXXXIX. And I also declare, that the provision hereby made for my said children, grandchildren, and issue respectively, is in lieu and full satisfaction of the provision made for my children by my said marriage-settlement, so that the money thereby secured to my children may be considered as part of the trust monies settled by this my will; and so that my said children, or any person or persons deriving a title under them, and also claiming any benefit under this my will, may be bound to conform to the dispositions of this my will.

That provisions for children, &c. shall be in satisfaction of the provisions made for them by the testator's marriage settlement.

XC. Provided always, and notwithstanding any of the trusts hereinbefore expressed and declared, it is hereby agreed by and between the parties to these presents, that no child or children of the said A. B. who shall be entitled to all or any part of the said trust monies, stocks, funds, and securities, under the trusts hereinbefore declared thereof, or the executors, administrators, or assigns of the same child or children, shall have the same trust monies, stocks, funds, and securities, or his, her, or their share or shares thereof, paid or transferred to him, her, or them respectively, before or until such time as the same child or children respectively, or being a female or females and married, her or their husband or husbands, or the executors or administrators of a deceased child or children, or, at the option of the said C. D., his executors or administrators, the assignee (if any) of the same child or children, shall have executed, at his or their own costs and charges, to the said C. D., his executors or administrators, a bond in the sum of £—— at least, to be conditioned for the indemnity of the said C. D., his heirs,

To suspend the right of cestuis que trust to call for their portions, till they shall have given a bond for indemnity, &c.; and in the meantime, their portions to be a fund for indemnity.

executors, and administrators, and all persons claiming under him and them, of and from all costs, charges, and expenses as between attorney and client, which the said C. D., his heirs, executors, and administrators, and every of them, shall from time to time severally and respectively incur, and disburse or become liable to pay for or in respect of any suit or suits then depending, or which at any time and from time to time thereafter shall be instituted against the said C. D., his heirs, executors, and administrators, or to which he or they shall be made a party or parties, for or by reason or on account of the said recited will and codicil of the said A. B., or the probate of the same will and codicil, or all or any of the trusts, devises, and dispositions contained in the same will and codicil respectively, or the refusal to act in the execution of all or any of the same trusts, or on any other account in anywise concerning the said recited will and codicil of the said A. B., or his real or personal estate, or the execution of these presents, or the trusts hereinbefore contained, on the payment or transfer of the same portion or portions respectively; and that in the meantime, until such bond shall be executed by each such child, her or their husband or husbands, executors, administrators, or assigns, pursuant to the provision hereinbefore contained in that behalf, the share of the same child shall remain, continue, and be charged and chargeable with, and be a fund for the indemnity of the said C. D., his heirs, executors, or administrators, and all persons claiming under him and them, in lieu and place of such bond, and for all the purposes for which such bond is hereby required to be given.

That trust-monies secured by bond shall be the principal fund to indemnify against eviction, and children not to be entitled to same till after doing necessary acts to convey and confirm.

XCI. Provided always, and notwithstanding any of the trusts hereinbefore declared and contained, the said trust monies secured by the said bond, and the securities on which the same shall be invested, shall be held under and subject to the further trusts hereinafter declared concerning the same; (that is to say), in case the said A. B., his heirs or assigns, shall at any time during the life of the said C. D., or after her death and during the minority of any of the children or issue of the said intended marriage, or within six years after such issue shall attain the age of twenty-one years, or,

which shall first happen, within six years after the failure of such issue, be evicted from the possession or enjoyment of all or any part of a certain farm called W., situate in the parish of B. aforesaid, and containing —— acres or thereabouts, be the same or more or less, (being a farm lately the inheritance of the said C. D., and conveyed and assured by her to or to the use of or in trust for the said A. B., his heirs, appointees, and assigns, at or for the price or sum of £——, including therein the said sum of £——, secured by the said bond), and notice of such eviction shall be given to the trustee or trustees for the time being of these presents, then, from the time that such notice shall be given, the said trust monies and other trust property shall be held as the primary fund to indemnify and save harmless the said A. B., his heirs, appointees, and assigns, of, from, and against all loss, costs, charges, damages, and expenses, by reason of any such eviction; such loss, costs, charges, damages, and expenses to be ascertained, if the said trustee or trustees on the one part, and the said A. B., his heirs, appointees, or assigns, on the other part, shall think fit, by two persons, one to be named by the said trustee or trustees for the time being, and the other by the said A. B., his heirs, appointees, or assigns, or by an umpire to be appointed by the two referees. Provided also, and no child or other issue of the said intended marriage shall be entitled to have or receive any part of the said trust monies or other trust property, before or until such time as such child or issue shall have done all acts necessary for conveying and assuring all the right, title, interest, claim, and demand, or possibility of claim and demand of such child or issue of and in the said messuage, lands, and hereditaments, or any part thereof, to and to the use of the said A. B., his heirs, appointees, and assigns.

To accelerate the portions of children on husband's second marriage.

XCII. Provided always, and in case the said A. B. shall depart this life in the lifetime of the said C. D., [and he shall marry again], and there shall be a child or children of the now intended marriage, living at (*a*) such his second

(*a*) When the words in brackets are omitted,—

"his decease, or born in due time afterwards."

marriage, then and in that case the sum of £—— 3 per cent. Annuities if there shall be only one such child, and £—— 3 per cent. Annuities if there shall be only two such children, and £—— 3 per cent. Annuities if there shall be three or more such children, shall, from and immediately after the second marriage of the said C. D., be appropriated and set apart for the benefit of such child or children, and held upon, under, and subject to the same or the like trusts for the benefit of the same child or children (*a*), as if the said C. D. had departed this life; yet, nevertheless, so that the said C. D. may again become entitled to the interest, dividends, or income of the portion of each child, who being a son shall afterwards depart this life under the age of twenty-one years, or being a daughter shall depart this life under that age without having been married. Provided always, that nothing contained in the said last-mentioned provision shall extend to any part of the said annuities or the produce thereof, which shall be advanced by the said trustee or trustees for the time being for any son or sons of the said intended marriage, pursuant to the power hereinafter contained in that behalf, and that after the second marriage of the said C. D., such advances shall or may be made out of the said annuities to be appropriated without any consent or concurrence of the said C. D. Provided always, and while there shall be three or more children of the said intended marriage, (including sons who, though dead, shall have attained the age of twenty-one years, and also daughters who, though dead, shall have attained that age or have been married), no right shall arise to the said C. D. of having the dividends, interest, or income of the same sum of £—— 3 per cent. annuities; and while there shall be two or more children of the said intended marriage, including such son or sons, daughter or daughters as aforesaid, no right shall arise to the said C. D. of having the dividends, interest, and income of £——, part of the said annuities to be appropriated as aforesaid; and that while

(*a*) "And with the same or the like provision for his, her, or their maintenance and education."

there shall be one child of the said intended marriage, (including such son or daughter as aforesaid), no right shall arise to the said C. D. of having the dividends, interest, and income of £——, part of the said annuities, to be so appropriated as aforesaid.

Imposing the necessity of election. (In a deed operating partly as an appointment, and partly as a gift).

XCIII. And it is hereby further directed, declared, and agreed, by and between the said parties to these presents, as far as they respectively are interested, and the said A. B. doth direct and appoint, that all persons claiming any benefit under all, any, or either of the appointments, conveyances, and assignments hereinbefore contained, shall, under the doctrine of election, be bound to give effect to every disposition and appointment made by these presents, according to the original plan of the limitations, any law or usage to the contrary notwithstanding.

That estates limited under power of leasing shall take effect in priority of estates limited under other powers; and that estates limited under power of sale and exchange, shall take effect in priority of all other powers, except power of leasing; and that all other estates and charges limited under powers, shall take effect according to their priority in time. (In wills).

XCIV. Provided also, and I do hereby declare my will and mind to be, that the uses or estates which shall be limited or appointed in pursuance and exercise of the powers of limiting and appointing by way of lease or demise as aforesaid, shall overreach, take effect in priority of, and stand good against the uses or estates which shall be limited or appointed in pursuance of any other of the powers contained in this my will, notwithstanding the uses or estates so to be limited or appointed, in pursuance and exercise of the said power of limiting or appointing by way of lease or demise as aforesaid, shall be subsequently limited and appointed in point of time; and that the uses or estates which shall be limited or appointed in pursuance or exercise of the power of limiting for effectuating any such sale or exchange as hereinbefore is mentioned, shall overreach, stand good, and take effect against the uses or estates which shall be limited or appointed in pursuance of any other of the powers contained in this my will, except the uses or estates which shall be limited or appointed in pursuance or exercise of the power of limiting or appointing by way of lease or demise as aforesaid, notwithstanding the uses or estates so to be limited or appointed shall be subsequently limited or appointed in point of time; But in all other cases, except as aforesaid, and ex-

cept in those cases where the contrary has been by this my will directed, the several charges, uses, and estates which shall be created, limited, or appointed, in pursuance of the several powers and authorities contained in this my will, shall take effect and stand good respectively, accordingly as the same shall in priority of time be exercised, limited, or appointed, the one before or after the other; and that none of the uses or estates so to be subsequently created, limited, or appointed, in pursuance of the said powers and authorities, (other than and except as aforesaid), shall operate so as to determine, charge, change, and make void, overreach, prejudice, or impeach the former; but that every such charge, use, or estate, shall (other than and except as aforesaid) be in force, take effect, and continue respectively in such order and course as every such charge, use, or estate shall precede the other in point of creation, limitation, or appointment, without the least respect to the order of perusing or inserting the same several powers and authorities, anything in this my will contained to the contrary thereof in anywise notwithstanding.

That the sale shall not operate to confirm any leases.

XCV. And it is hereby provided, declared, and agreed, that nothing hereinbefore contained is meant or intended to be a confirmation at law or in equity of any lease or leases hereinbefore mentioned, any further or otherwise than as the said A. B. is bound by the same lease or leases respectively.

That leases under a power shall not be affected by a sale, and that the lands taken by way of equivalent shall not be charged with such leases, and that power of leasing shall cease upon sale.

XCVI. And it is hereby declared and agreed, that the leases or appointments to be made of any of the lands and hereditaments to be sold as aforesaid, before the same sale or sales shall be made, shall remain in full force notwithstanding such sale or sales; and that the same leases or appointments shall not affect the lands to be purchased or taken by way of equivalent as aforesaid; and that the said power of leasing shall cease, as to the lands and hereditaments to be sold as aforesaid, immediately after the same lands and hereditaments shall have been sold, pursuant to the provisions hereinbefore contained in that behalf.

That powers of sale and exchange, and of

XCVII. Provided always, and during the lifetime of the said A. B., the said powers of sale and exchange, or the said

power of appointing new trustees, shall not be exercised over the hereditaments of which she is and shall then remain tenant for her life, until her consent in writing for that purpose first had and obtained.

appointing new trustees, shall not be exercised during the life of tenant for life, without his consent.

XCVIII. And it is hereby declared and agreed, that notwithstanding anything hereinbefore contained, the said powers of sale and leasing contained in the said indenture of release shall remain in full force, and that the several annuities, sums, or yearly rents of £—— and £——, and the said several terms of two hundred years and one thousand years shall be subordinate thereto, and shall or may be overreached by the execution of the same powers respectively in the same manner to all intents and purposes as if the said several annual sums of £—— and £——, and terms of two hundred years and one thousand years, had been respectively limited or created by or contained in the said hereinbefore in part recited indenture of release, and been thereby subjected to the said powers; and that all lands and hereditaments to be taken or purchased by way of equivalent for the lands to be sold as aforesaid shall be settled and assured, so that the lands and hereditaments to be taken or purchased by way of equivalent as aforesaid may be subject to the said annual sums or yearly rents of £—— and £—— and the said terms of two hundred years and one thousand years, in the same manner, and in the same order, course, and priority as the lands and hereditaments to be sold shall respectively be subject thereto at the times of such sale.

That estates and charges created by appointment, shall be subject and subordinate to the powers in the settlement.

XCIX. Provided always, and I do hereby declare my will and mind to be, that the rents, issues, and profits of all the freehold, copyhold, and leasehold estates hereinbefore devised and bequeathed shall, until the sale thereof respectively, be applied in payment of the interest of each of my debts as shall carry interest, until the same shall be satisfied; and the residue of such rents, issues, and profits shall be applied to the same purposes as the interest, dividends, and annual produce of the monies to arise by the sale or sales hereinbefore directed to be made as aforesaid would, for the time being, be applicable under or by virtue of the trusts

That until sale, the rents shall be applied in keeping down interest of debts, and the residue to the same purposes as the interest of the money arising from the sale. (In wills). [*From MS. collection of John Coles, Esq.*]

hereinbefore expressed or declared of and concerning the same, in case the same were then sold.

That annuities shall be paid in the order they are given. Power to trustees to liberate whole or part of personal estate from the charge upon a given event, (if real estate shall be deemed a sufficient security). (In wills).

C. Provided always, and notwithstanding all or any of the provisions contained in this my will, I direct that the annuities given by this my will shall be payable and paid only in the order, priority, and course hereinbefore mentioned with reference to the maintenance and education of my children; and further, that in case any of my said sons shall attain the age of twenty-one years, or die under that age leaving issue living at his or their death or respective deaths, while any of the said annuities shall be subsisting, that then, if, in the opinion of my trustee or trustees for the time being, the residue of my real estate shall be adequate in point of income to answer the said annuities, without any aid from my personal estate, the residue of my personal estate, or the stocks, funds, and securities in and upon which the same shall be invested, shall be discharged from the payment of the same annuities or otherwise, as to my said trustee or trustees for the time being in his or their discretion shall seem meet, or part only of the same residue of my personal estate shall be retained to answer the said annuities, or such of them respectively as shall be subsisting from time to time; and that the other parts of the residue of my personal estate shall be exonerated and discharged from the said annuities or such of them as shall then be subsisting.

For cesser of term after performance of trusts.

CI. Provided always, and it is hereby further agreed and declared between and by the said parties to these presents, that from and immediately after all the trusts hereinbefore expressed or declared of the said term of one thousand years shall in all respects be fully performed and satisfied, or shall become unnecessary or incapable of taking effect, and the said A. B. and C. D., and each of them, their and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses (if any) to be occasioned by or relating to the trusts hereby in them reposed, and which costs, charges, and expences the said trustees or trustee are and is hereby authorized to raise and levy by the ways and means hereinbefore men-

tioned, or any of them, the same term shall, as to such of the manors, lands, and other hereditaments comprised therein as shall not have been sold, mortgaged, or disposed of for the purposes aforesaid, cease, determine, and become utterly void, to all intents and pnrposes whatsoever.

For cesser of term after performance of trusts, on payment of a shilling.

CII. Provided always, and it is hereby declared and agreed by and between the parties to these presents, as far as they respectively are interested, and the said term of one hundred years is granted upon this condition, that if after the decease of the said A. B., and payment to the said C.D., his heirs or assigns, of the said annual sum or yearly rent of £——, and all the arrears thereof; and also if after payment of all such other sums of money (if any) as shall become payable and are hereinbefore directed to be raised and paid by the said E. F. [*trustee*], his executors, administrators, and assigns, and all such costs, charges, damages, and expenses as aforesaid; and also after full performance or discharge of the trusts of the said term of one hundred years, the said E. F., his heirs or assigns, shall pay to the said C. D., his executors, administrators, or assigns, the sum of one shilling, then and thenceforth the said term of one hundred years of or in the hereditaments and premises therein comprised, or so much of the same term as shall not be disposed of under the trusts hereby declared concerning the same term, shall cease, determine, and be void; but without prejudice to any sale, mortgage, or disposition previously made, of all or any part of the hereditaments and premises comprised in the said term of one hundred years, for any of the purposes hereinbefore declared of and concerning the same term.

For cesser of term limited for raising portions and annuities.

CIII. Provided always, and it is hereby declared, that when all the portions and interest, annuities, and sums of money hereby directed and agreed to be raised by and under the trusts of the said term of two thousand years shall have been raised or levied, or shall cease to become payable, [or the same respectively shall have been secured, or an equivalent appropriated as a security to the satisfaction of the trustee or trustees for the time being of the said term of two thousand years, or an adequate fund for the security thereof shall be appropriated in the £3 per cent. Annuities, with the consent and approba-

tion of the trustee or trustees for the time being], and all and singular the trusts hereinbefore declared of and concerning the same term shall in all other respects be fully performed or satisfied, or shall be discharged, either by becoming unnecessary or incapable of being performed, and the costs and charges of the trustees of the same term in and about the execution and performance of the said trusts of that term shall have been paid and satisfied, and which said costs and charges the trustee or trustees for the time being of the said term is and are hereby authorized to raise and take by the means aforesaid, then and thenceforth the said term of two thousand years, or so much thereof as shall not have been disposed of under the trusts hereinbefore declared concerning the same term, shall cease, determine, and be absolutely void, but without prejudice to any sale, mortgage, or disposition which shall have been made of all or any part of the hereditaments comprised in the same term for all or any of the purposes hereinbefore mentioned in pursuance of the trusts hereinbefore declared concerning the same term.

For cesser or assignment of term on performance of trusts (*a*).

CIV. Provided also, and it is hereby further declared and agreed by and between all the parties to these presents, that when and as soon as all the trusts hereinbefore expressed and declared of and concerning the said first-mentioned term of one thousand years shall in all respects be fully performed and satisfied, or become unnecessary, and the said A. B. and C. D., and each of them, their and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses (if any)

(*a*) For cesser of two terms,—

"That each of the said several terms of one thousand years and two thousand years respectively shall cease, determine, and be void, upon and as soon as all the trusts hereinbefore declared thereof shall be performed, fulfilled, satisfied, or discharged, or become unnecessary or incapable of taking effect; subject, nevertheless, and without prejudice to any sales or mortgages previously made, under or by virtue of and performance of the trusts hereinbefore declared of the same terms."

to be occasioned by or relating to the trusts hereby reposed in them as aforesaid, the said first-mentioned term of one thousand years, as to such and so many and such parts of the said messuages &c. comprised therein as shall not be sold or mortgaged for the purposes aforesaid, shall be surrendered or otherwise, and, at the option of the said E. F., his heirs or assigns, shall be assigned to attend the freehold reversion and inheritance of the lands and hereditaments comprised in the same term; and as to such and so many and such parts of the same messuages &c. as shall have been mortgaged for the purposes aforesaid, shall, subject to such mortgage or mortgages, attend, wait upon, and go along with the freehold and inheritance of the lands and hereditaments to be comprised in the same mortgage or mortgages respectively.

That legacies in favour of certain persons shall in a certain event be revoked, and a bequest of same in favour of children; on failure of children, revival of legacy.

CV. Provided always, and in case I shall have any child or children of my body lawfully begotten living at my death, or born in due time afterwards, then I revoke all and singular the legacies contained in this my will which are given to or in trust for my brothers, sisters, and cousins, or any of them, and give the property so bequeathed to or in trust for them respectively, and the dividends, interest, and income thereof, from my death, unto my child or children living at my death, or to be born in due time afterwards, to be equally divided between them, if more than one, share and share alike, and to be vested in sons respectively when and as they respectively shall attain their respective ages of twenty-one years or die under that age leaving issue living at their deaths, and in daughters, when and as they respectively shall attain that age or be married, with benefit of survivorship between them, as to their original and also their surviving shares; and also as to the accumulations and savings (if any) of the dividends, interest, and income of the portions of the same children respectively, in case any of them, being sons, shall depart this life under the age of twenty-one years without leaving any issue of their bodies lawfully begotten living at their deaths, or any of them, being daughters, shall depart this life under the age of twenty-one years without having been married, and with full power and authority to and for my executors and personal representatives for the

time being to apply all or any part of the dividends, interest, and income of the portion of each of the same children in or towards the maintenance, education, and advancement of the same child: Provided always, and in case all such children, being sons, shall depart this life under the age of twenty-one years, and neither of them shall leave any issue of his body lawfully begotten living at his death, or, being daughters, shall depart this life under the age of twenty-one years without having been married, then I will and direct, that from and after such failure of my children, the legacies hereby revoked shall be revived and have effect from such failure of my children, as far as may be, and circumstances will then admit.

To prevent devisees charging estates with an annuity &c. until twenty-five.

CVI. Provided always, and I do hereby declare my will to be, that the limitations and trusts hereinbefore made to and declared for the benefit of my said son, are so made and declared upon this express condition, that he shall not, alone or jointly with any person or persons, at any time or times before he shall have attained the age of twenty-five years, by deed, bond, judgment, or otherwise, grant or secure, or join in granting or securing, or in anywise bind or engage himself, when he attains that age, to grant or secure or join in granting or securing to any person or persons the payment of any rent-charge or rent-charges, annuity or annuities, or sum or sums of money; and that if he shall before he attains that age grant or secure, or join in granting or securing, or bind or engage himself, when of that age, to grant or secure any rent-charge or rent-charges, annuity or annuities, or sum or sums of money, then and in such case the use or estate hereinbefore limited to him for his life, of and in one equal moiety of the hereditaments and premises last hereinbefore devised, shall cease and determine, as if he were actually dead at the time of making or joining in making or entering into any such grant, security, bond, or engagement.

That (subject to contracts which may have been entered into) in case of releasor's death be-

CVII. Provided always, and in case the said A. B. shall depart this life before sale shall have been made by him of the said hereby or hereby intended to be released or otherwise assured moiety of and in all the said plantations, lands,

hereditaments, slaves or apprenticed labourers, cattle, and implements, then and in that case, immediately upon and after the death of the said A. B., the said moiety or other part of and in all such and so many and such parts of the same plantations, lands, hereditaments, slaves or apprenticed labourers, cattle, and implements as shall remain unsold, shall (subject nevertheless and without prejudice to any contract or contracts which shall have been entered into by the said A. B. for the sale thereof, and which contract or contracts shall be performed by the said C. D., his heirs, appointees, or assigns) remain, continue, and be to such and the same uses, upon such and the same trusts, and for such and the same ends, intents, and purposes, as the same stood limited, settled, and assured immediately before the execution of these presents, anything hereinbefore contained to the contrary notwithstanding.

fore sale, premises then unsold shall be held to the same uses as they stood before the execution of deed.

CVIII. Provided always, and no payments which shall be made by the said A. B., his heirs, executors, administrators, or assigns, shall be or be deemed or considered as made in satisfaction of the said sums of £—— and £——, or either of them, or the interest of the same or either of them, unless the same shall be so made expressly in reduction and part-payment or in discharge of the said sums of £—— and £——, or one of them, or the interest of the same or one of them; and that the said A. B., his executors, administrators, or assigns shall not be entitled to pay the said sum of £—— [*first-mentioned sum*] or any part thereof, till he or they shall have paid the said sum of £—— [*second-mentioned sum*] and the interest thereof. But it is further agreed, that when and as soon as the said sums of £—— and £—— respectively, and the interest thereof respectively, shall be paid or satisfied, the lordship, manor, hereditaments, and premises hereby released or otherwise assured, or intended so to be, or such parts thereof as shall remain unsold, shall be reconveyed to the said A. B., his heirs and assigns, notwithstanding the existence of any further or other debt due or owing by or from the said A. B., his heirs, executors, administrators, or assigns, to the said C. D., his executors, administrators, or assigns, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

That certain payments shall not be considered in satisfaction of certain sums unless expressed to be so —that A. B. shall not be entitled to pay a certain sum till payment of another sum, and agreement that when both sums are paid the premises unsold shall be conveyed to A. B., notwithstanding any other debt then in existence.

That upon sons attaining twenty-four, or grandsons twenty-one, trustees shall purchase £3 per cent. Consols, sufficient to answer an annuity, and that lands shall be discharged therefrom.

CIX. And I direct, that after each or either of my sons shall attain his age of twenty-four years, or each or either of my grandchildren shall attain the age of twenty-one years, an appropriation shall be made in the name or names of the trustee or trustees for the time being of this my will for answering each or either of the said annuities, by the purchase or investment in the name or names of the same trustee or trustees of so much £3 per cent. Consolidated Bank Annuities, as will produce an income by the dividends thereof equal to such annuity; and that then and in that case, and from that time, my freehold, copyhold, and leasehold estates, and other parts of my personal property, shall be exonerated and discharged from the annuity which shall be secured by such appropriation; And if the said A. B. should by circumstances be excluded from taking a share under this my will as one of my next of kin, I direct that he, or, if dead, his child or children, as representing him, shall be considered as if he or they were one and only one of such next of kin; and that the share of such his child or children shall, as far as circumstances will admit, be considered as or in the nature of a vested interest from his death; But such child or children, if really and in fact next of kin, shall be entitled only to a share or shares as next of kin in fact, nor shall the said A. B., or any one claiming under him, be in that event entitled to any share as if next of kin.

That annuities belonging to testator at his death shall be kept on foot for the benefit of the person entitled to the income of trust monies, and that money arising from annuities redeemed may be applied in purchase of other annuities. Insurance to be made for annuities held on the trusts of this will.

CX. And I declare, that such annuities as may belong to me at my death may be continued or kept on foot, and preserved from sale, for the benefit and to increase the income of the person who, for the time being, shall be entitled to the income of my trust property; and that in case any of the same annuities should be redeemed, then the amount of the money to be received as the consideration of the repurchase shall or may, on the request and in the discretion of the person who for the time being shall be entitled to the income of my trust property, be laid out in the purchase of another annuity or annuities, to be held on the like trusts as are by this my will declared of the annuity or annuities which shall be so repurchased; But I direct, that while any annuity or annuities belonging to me at my death, or to be purchased

after my death, shall be held on the trusts of this my will, an insurance or insurances shall be effected, so as to preserve to my trust estate, on the cesser or determination of such annuity or annuities by the death of the person or persons on whose death such annuity or annuities respectively shall be determinable, one sum or sums in money, equal to the price at which such annuity or annuities shall have been purchased by me, or by my trustee or trustees for the time being.

That in case an annuity shall be continuing when trust property shall be sold, a part of trust monies to be laid out by trustees in purchase of £3 per cent. Consols, and in defraying the expenses of purchasing and transferring &c., and the sums purchased to be held in trust to pay the annuity; and after determination of same, upon other trusts.

CXI. Provided always, and in case the said second-mentioned annuity of £—— shall be continuing at the time when the trust property shall be sold under the trusts and provisions last hereinbefore contained, then and in that case a competent part of the said trust monies shall be laid out and invested by the said A. B. and C. D., or the survivor of them, and the executors or administrators of such survivor, in their or his names or name, in the purchase of £—— 3 per cent. Consolidated, or 3 per cent. Reduced Bank Annuities, and in defraying the commission on purchasing and the expenses of transferring the same Bank Annuities; and the said sum of £—— shall be held by the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, upon trust to answer and pay the said last-mentioned annuity of £—— during the continuance thereof, to the said E. F. and her assigns; and after the determination of the said last-mentioned annuity, and in the meantime subject thereto, do and shall stand and be possessed of the said last-mentioned Bank Annuities upon the same or the like trusts as are hereinbefore declared of and concerning the residue of the trust money to be produced from such sale or sales as are lastly hereinbefore directed to be made, being the sale or sales to be made after the death of the said G. H., in the event of the death of the said E. F. in his lifetime.

That in case of eviction of any part of settled lands, sums raiseable under settlement shall be reduced pro-

CXII. Provided always, and in case there should be an eviction of the said manors and hereditaments hereby released or otherwise assured, or intended so to be, or any of them, to the value of £—— a year or upwards, within twenty-one years from the day of the date of these presents,

portionably, and that trustees shall be judges of the quantum of reduction.

then and in that case, and when and so often as such eviction shall happen, unless the contrary should be directed by the said E. K. the elder and E. K. the younger, during their joint lives, the several annual rent-charges hereby created, and the rent-charges which may be created under any of the powers hereinbefore contained, and also the several sums in gross (except money for costs as aforesaid) which are or may be charged under or by virtue of these presents, either for portions or otherwise, shall be reduced in amount, in the same rate and proportion as the then annual value of the manors and hereditaments so evicted shall bear to the then annual value of all the manors and other hereditaments hereby settled and agreed to be settled, including those to be purchased, which the said &c.; And the full, whole, and exclusive power of fixing and ascertaining such proportion shall be in the said A. B. and C. D., or the survivor of them, his executors or administrators, or other person or persons who, for the time being, shall be substituted as a trustee or trustees in his or their place or stead; and the determination of the trustee or trustees for the time being, declared by writing under his or their hand and seal or hands and seals, and inrolled in the High Court of Chancery, shall, from and after such inrolment, be final, conclusive, and binding on all persons parties to these presents. Provided always, and no such eviction shall prejudice, affect, or impeach any sale or sales, mortgage or mortgages, which shall have been previously made under or by virtue of all or any of the powers hereinbefore contained.

That in certain events a charge shall not be raised, or, if raised, shall be applied in exoneration of lands, or in compensating the person who shall have borne the charge.

CXIII. Provided always, and it is hereby declared and agreed by and between all the parties to these presents, that in case there shall be no child of the said intended marriage, or no child who shall be living at the death of the survivors of them the said A. B. and C. D., or who shall leave issue living at the death of the survivor of the said A. B. and C. D., or if the child or each of the children living at the death of the survivor of the said A. B. and C. D. shall afterwards depart this life under the age of twenty-one years without issue living at his death, then subject and without prejudice to the right of the said A. B. during her life to

receive the interest and income of the said sum of £——, and of the stocks, funds, and securities in and upon which that sum shall be invested, shall, unless previously raised, cease to be a charge on the said manors, messuages, lands, tenements, and hereditaments, to be granted by way of mortgage for the security of the same; and if raised, shall be applied in the exoneration of the said manors, messuages, lands, tenements, and hereditaments from which the same shall have been raised, or (as the case shall require) in compensating the person or persons who shall have borne the charge of raising the same, any thing hereinbefore contained to the contrary thereof notwithstanding.

That residue of trust money shall be discharged from annuity on the appropriation of a fund to answer the same annuity: no appropriation to be made except to enable children to receive their portions.

CXIV. Provided always, and in case the said trustee or trustees for the time being do and shall, at any time after the death of the said A. B., appropriate and set apart so much of the said trust monies, stocks, funds, and securities (not being the said annuity) as shall then produce a yearly sum of £——, then and in that case, and from that time, the residue of the said trust monies, stocks, funds, and securities, shall be exonerated of and from the payment of the said annual sum of £——. Provided always, and no such appropriation shall be made for any other purpose than to enable the child, children, or other issue of the said intended marriage to receive his, her, or their portion, notwithstanding the said C. D. shall be living.

That on dissolution of intended marriage, or on a second marriage, a sum of money shall be appropriated for the benefit of intended wife and children of marriage.

CXV. Provided always, and it is hereby further declared and agreed by and between the said parties to these presents, and the said A. B. and C. D., according to their respective rights and interests, do hereby respectively direct and appoint, that in case the said A. B. [*husband*] shall survive the said C. D. [*wife*], and shall afterwards intermarry with any other person while there shall be any child or children, or other issue of the said intended marriage, or if the said intended marriage between the said A. B. and C. D. shall be dissolved by Act of Parliament, in the lifetime of the said C. D., by reason of any act or default on the part of the said A. B., then and in either of the said cases the said sum of £——, or so much and such part thereof as shall

have been lent or advanced to the said C. D., or (as the case shall require) £—— part of the said trust monies, or so much thereof as with the money to be lent or advanced to the said C. D. will make up the sum of £——, shall be set apart and appropriated for the benefit of the said C. D., and the children (if any) of the said intended marriage, or for such children alone if the said C. D. shall be dead, or for the said C. D. alone if there shall be no issue of the said intended marriage; and be held in the same manner, and upon, under, and subject to the same or the like trusts, powers, provisoes, and regulations in all respects, and to be vested and paid or payable at the same times as if the said A. B. had actually departed this life at the time when such dissolution of the said intended marriage or (as the case shall require) such second marriage shall take place, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

That unless stipulated to the contrary, all sums advanced to issue of marriage shall be borne by the funds in a certain proportion.

CXVI. Provided always, in case no stipulation to the contrary shall be made during the joint lives of the said A. B. and C. D., with their joint consent in writing, all sums of money to be advanced to and for the said sons and issue male respectively of the said intended marriage, shall, as to and against the said A. B. and C. D. respectively, and all persons claiming under them respectively, by virtue of their ultimate or reversionary interest, be taken from the several funds, rateably and in proportion as £—— bears to £——; viz. the funds of the said C. D. to bear —— parts of such advancement, and the funds of the said A. B. the younger to bear the remaining —— parts of the same advancement.

That a prior annuity charged on other lands shall be received in exoneration, as far as it will extend, of the annuity hereby secured; and that while wife enjoys provision made for her by another deed, the pre-

CXVII. Provided also, and it is hereby further declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them and of these presents, that one annuity or yearly rent-charge of £——, secured or to be secured to the said A. B. for the term of her life, to commence after the death of the said C. B., and to be charged and chargeable upon, and issuing, payable, had, received, and taken from and out of all or part of the hereditaments which are subject to the power of jointuring contained in the will of E. F. Esquire, the maternal

godfather of the said C. B., shall be applied, as far as the same will extend, in part payment and in part satisfaction and discharge of the said annual sum or yearly rent hereby secured to or provided for the said A. B., and in exoneration, as far as the same will extend and shall be received, of the hereditaments hereby charged or made chargeable with the said annuity or yearly sum of £——, or, as the event shall happen, £——, any thing hereinbefore contained to the contrary in anywise notwithstanding. Provided always, and it is hereby further directed, declared, and agreed by and between the parties to these presents, that during such time as the said A. B. and her assigns shall have, hold, and enjoy the provision made for her by a certain indenture bearing even date with these presents, and made or expressed to be made between the said C. B. of the one part, and the said A. his wife of the other part, being a provision made for the said A. B. in pursuance and in exercise of a power of jointuring contained in the last will and testament of the said E. F. deceased, the maternal godfather of the said C. B., the said annuity or yearly rent-charge of £—— shall be reduced to £—— a year, or (as the case shall require) the said annuity or yearly rent-charge of £—— shall be reduced to £—— a year, any thing hereinbefore contained to the contrary notwithstanding (*a*).

sent provision shall be reduced to a certain sum.

CXVIII. And it is hereby further directed, declared, and agreed by and between the said parties to these presents, as far as they respectively are interested, that in the meantime, and until such settlement shall be made, and also as well during the minority of the said C. D. [*wife*] as after she shall be adult, the said freehold and copyhold, or customaryhold and leasehold estates, stocks, funds, and securities, and personal estates, shall, as far as the said A. B. [*husband*] and C. D. respectively are or can, shall, or may be interested therein, and can effectually bind the same, be subject to the trusts, ends, intents, and purposes hereinbe-

That until settlement shall be made by wife, and during minority, freehold, copyhold, and leasehold and other premises shall be subject to trusts declared; and wife's heirs at law to elect, to give effect to settlement as to real estate before entitled to

(*a*) Add a covenant by husband for payment of annuity, such covenant to be an auxiliary security only. For a Form adapted to this purpose, vide Tit. X., "Of Covenants."

benefit of leaseholds, &c.; rents and dividends to be applied till wife of age as if adult; with a proviso that, wife dying before settlement, agreement shall not exclude husband from tenancy by curtesy or custom.

fore and hereinafter expressed and declared concerning the same; and the heirs at law of the said C. D. shall, under the doctrine of election, be bound to give effect to the same settlement as to the real estate before they shall be entitled to any benefit out of the leasehold estates; and that during the minority of the said C. D. and afterwards, and until such settlement shall be made, the rents and profits of the said freehold and copyhold, or customaryhold and leasehold hereditaments, and the dividends, interest, and income of the said stocks, funds, and securities, shall be applied in the same manner, and in the same shares and proportions, and for the benefit of the same persons, as if the said C. D. had attained her age of twenty-one years, and a settlement had been made, pursuant to the covenants, stipulations, and agreements hereinbefore contained. Provided always, and in the event of the death of the said C. D. in the lifetime of the said A. B., and before such settlement as aforesaid shall be made, the agreement hereinbefore contained shall not exclude the right of the said A. B. to be and be deemed tenant by the curtesy of England, or tenant by the custom of all the freehold and copyhold messuages, lands, tenements, and hereditaments, and parts and shares of freehold and copyhold messuages and hereditaments hereby covenanted and agreed to be settled, in the same or the like manner as if no such settlement had been agreed to be made, any thing hereinbefore contained to the contrary notwithstanding.

That until sale, rents shall be applied as the interest of the proceeds of sale would be applicable.

CXIX. Provided always, and it is hereby agreed and declared, between and by the said parties to these presents, that in the meantime, and until the said messuage and other hereditaments comprised in and conveyed or intended to be conveyed by the said indenture of even date herewith, shall be sold and disposed of in pursuance of the trusts therein for that purpose contained, and hereinbefore mentioned, they the said A. B. and C. D., and the survivor of them, and the heirs and assigns of such survivor, do and shall receive the rents, issues, and profits thereof respectively, or of such part or parts thereof respectively as shall from time to time remain unsold; and pay and apply the same in the manner in

which the annual produce of the monies to arise from the sale of the said messuage and other hereditaments would be applicable for the time being by virtue of the trusts hereinbefore contained, in case the same were sold.

That interest of money to be laid out in land shall be paid to the persons who would be entitled to the rents of the lands if purchased.

CXX. And it is hereby declared and agreed by and between the parties to these presents, that after the solemnization of the said intended marriage, and in the meantime, and until the said sum of £—— shall be invested in the purchase of messuages, lands, tenements, and hereditaments, as aforesaid, the dividends, interest, and annual or other income of the said sum of £——, or of the stocks, funds, or securities in or upon which the same shall from time to time be invested, or the interest, dividends, annual or other income of so much and such part of the said sum of £——, as from time to time shall remain uninvested in the purchase of messuages, lands, tenenements, and hereditaments as aforesaid, shall belong to and be held in trust for the person or persons respectively who, under the trusts hereinbefore contained, would for the time being, and from time to time, be entitled to the rents and yearly profits of the messuages, lands, tenements, and hereditaments hereby directed to be purchased with the same money, in case such purchase or purchases was or were actually made; and in such and the same manner and proportions as he, she, and they respectively would be entitled to the same rents and profits.

To accumulate interest and dividends during suspense of vesting.

CXXI. Provided always, and it is hereby agreed and declared, that after the decease of the survivor of them the said E. F. and G. H. his intended wife, and in the meantime, and until the said trust monies, stocks, funds, and securities shall become payable to some person or persons by virtue of the trusts hereinbefore declared, they the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, shall receive the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities respectively, or the unapplied share or shares thereof respectively, and lay out and invest the same in their or his names or name in the purchase of such stocks, funds, or securities as aforesaid; and

do and shall alter and vary the same stocks, funds, and securities from time to time, as they or he shall think proper; and do and shall receive the interest, dividends, and annual produce of the said last-mentioned stocks, funds, and securities, and lay out and invest the same in their or his names or name, in the purchase of stocks, funds, or securities of a like nature, to be also from time to time altered and varied, as to them or him shall seem proper; and so continue receiving and investing, to the intent that the same interest, dividends, and annual produce, stocks, funds, and securities, and the resulting income and produce thereof respectively, may, during such suspense of vesting as aforesaid, accumulate in the way of compound interest; And it is hereby declared, that the said interest, dividends, and annual produce, stocks, funds, and securities, and the accumulations thereof respectively, shall go and be in trust for the person or persons who, by virtue of the trusts hereinbefore declared, shall become entitled to the funds from which such accumulations shall have respectively proceeded, and be considered as part thereof.

To bring advancement into hotchpot; with variations. *For shorter forms, vide* Tit. VII. arts. xci., xcviii., cxxxiv., pp. 283, 298, 336; and Tit. IX. art. cxxiii. p. 682.

CXXII. Provided always, and it is hereby declared and agreed by and between all the parties to these presents, as far as they respectively are interested, that no child or children (*a*) [or issue] of the said intended marriage taking any part or parts of the said portions (*b*), under any appointment to him, her, or them, or in his, her, or their favour, shall without a new or further direction or appointment to him, her, or them, or in his, her, or their favour (*c*), be entitled to any further

(*a*) When applied to the children of two persons,—

"of either of them the said A. B. and C. D. respectively."

(*b*) Or,—

1. "sum of £——."

2. "two several sums of £—— and £——, or either of them, or of the stocks, funds, and securities in or upon which the same shall from time to time be invested."

(*c*) Or,—

"unless the person or persons making such appointment shall direct the contrary."

or other part or share of the same trust monies, stocks, funds, and securities respectively, either for want or in default of such appointment as aforesaid, or by reason or in right of survivorship or otherwise, unless or until he, she, or they shall bring the sum or sums of money (*a*) appointed to him, her, or them respectively, or in his, her, or their favour, or the amount or value thereof, into hotchpot, and distribution with (*b*) the other child or children of the said intended marriage, and make an allowance for the same as part of so much of the said trust monies, stocks, funds, and securities, as (*c*) shall remain to be divided for want or in default of such appointment as aforesaid (*d*); and that the trustee or trustees for the time being of these presents shall have the full and exclusive power of ascertaining and settling the amount of such value; and that the child or children to whom no appointment shall have been made, and also the child or children who shall bring his, her, or their advancement, or the amount or value thereof, into hotchpot or distribution (*b*), shall be entitled to have, receive, and take, and shall have, receive, and take the unappointed part of the said trust monies, stocks, funds, and securities hereby provided for the child or children of (*e*) the said intended

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(*a*) Or,—

"stocks, funds, and securities which, either from one only, or from both, the said several trust funds or trust estates shall be."

(*b*) Or,—

"with his, her, or their brother or brothers, sister or sisters."

(*c*) Or,—

"from both or either of the said trust funds or trust estates."

(*d*) Or,—

"And that, for the purpose of this present provision, both the said sums of £—— and £——, and the stocks, funds, and securities in and upon which the same sums shall be invested, shall be considered as one and the same fund."

(*e*) When applied to the children of two persons,—

"of each of them the said A. B. and C. D. respectively."

marriage, together with the sum or sums of money, stocks, funds, and securities (if any), or the amount or value thereof, which shall be brought into hotchpot, in the same manner and proportions as if the child or children to whom any appointment shall have been made, and who shall refuse to bring into hotchpot or distribution the amount [or value] of the money [or effects] appointed to him, her, or them, had never been born, any thing hereinbefore contained to the contrary thereof notwithstanding; [and further, that every such appointment to be made in favour of the issue of each or any child of the said intended marriage, shall, for all the purposes of this present provision, be and be deemed as an appointment to that child].

Short Form. Vide art. cxxii.

CXXIII. Provided also, and no child who shall receive any portion under any appointment shall be entitled to any further portion in default of appointment, without accounting for and bringing into hotchpot the amount or value of the portion received under any such appointment.

That accounts settled by trustees shall be binding on the cestuisque trust. (In an assignment of a part of an unascertained residue of a personal estate, to follow the letter of attorney).

CXXIV. And the said A. B. and C. D. hereby direct and declare, that all accounts of and concerning the residue of the personal estate of the said E. F. [*testator*] and the interest and income thereof, or the share of the said C. D. of the same residue, and the interest and income thereof, and of and concerning all sums of money (if any) already paid to the said C. D. for interest, maintenance, or otherwise which shall be settled by the said G. H. and I. K., or the survivor of them, his executors or administrators, or the person or persons who shall become a trustee or trustees in his or their stead on the one part, and the executors or trustees for the time being of the said E. F. on the other part, shall be final and conclusive on the said A. B., C. D., and all persons whomsoever who shall be entitled to any benefit under the trusts hereinbefore or hereinafter declared of and concerning the said trust monies, and share of personal estate, and the interest, dividends, and income thereof.

That trustees' receipts shall be discharges.

CXXV. Provided always, and it is hereby agreed and declared between and by the said parties to these presents,

that the receipt or receipts in writing of the trustees or trustee for the time being acting in the execution of the trusts hereby created, for any sum or sums of money payable to them or him under or by virtue of these presents, shall be a sufficient and effectual discharge or sufficient and effectual discharges for the same respectively, or for so much thereof respectively as in such receipt or receipts respectively shall be expressed or acknowledged to be received; and that the person or persons to whom the same respectively shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in anywise obliged or concerned to see to the application of the money therein respectively expressed or acknowledged to be received.

Of indemnity to purchasers, on payment of purchase or mortgage money to trustees.

CXXVI. And it is hereby declared and agreed by and between the said parties to these presents, as far as they respectively are interested, and the said A. B. and C. D. for themselves respectively, and their respective heirs, executors, administrators, and assigns, do hereby severally direct and appoint, that the person or persons respectively who shall become the purchaser or purchasers, or take a mortgage or mortgages of the said messuages, lands, and other hereditaments hereby released or otherwise assured, or intended so to be, his, her, or their heirs, executors, or administrators, shall not be obliged or required to see the application of the money to be advanced or paid by him, her, or them respectively, as the consideration of such purchase or purchases, mortgage or mortgages, or be answerable or accountable for the misapplication or nonapplication of the same money, or any part thereof, after the same shall have been paid to or to the order (*a*) of the said E. F., [*trustee*], his heirs, executors, administrators, or assigns (*b*);

(*a*) "or under the direction."

(*b*) "nor be obliged or required to see or take notice whether such sale or sales, mortgage or mortgages, is or are necessary for all or any of the purposes hereinbefore mentioned."

and that every receipt which shall be given by the said E. F., his heirs, executors and administrators, or assigns, for such purchase or mortgage money, or any part thereof, shall be a good, valid, and sufficient acquittance and discharge for the sum or sums of money which therein or thereby respectively shall be acknowledged or expressed to have been received; and that every sale and mortgage which shall be made, and contract for sale which shall be entered into, and conveyance which shall be executed by the said E. F., his heirs or assigns, shall be binding and conclusive on the said A. B. and C. D., and each of them, their and each of their heirs, executors, administrators, and assigns, and every of them. And it is hereby (*a*) further directed, declared, and agreed by and between the parties to these presents, that any money which shall be payable or paid under the trusts hereinbefore declared after the death of the said E. F., shall be payable or paid to the executors, administrators, or assigns, and not to the heirs of the said E. F.; or that if the heirs of the said E. F. shall receive the same, they shall pay over the same to the executors, administrators, or assigns of the said E. F.

Persons having trust monies, shall not be answerable for misapplication

CXXVII. And it is hereby further provided, declared, and agreed by and between all the parties to these presents, that the (*b*) person or persons who (*c*) from time to time

(*a*) This clause should never be omitted as often as real estates are vested in trustees, and the personal representatives are to be trustees of the money.

(*b*) Or,—

1. "person or persons, company or companies who shall become liable to the payment of the said sum of £—— already insured on the life of the said A. B. as aforesaid, or any other sum or sums of money to be insured on the life of the said A. B. as aforesaid, and also" &c.

2. "person or persons who shall pay to the said C. D. all or any part of the sum or sums of money hereby assigned or otherwise assured, or intended so to be, or who from time to time" &c.

(*c*) Or,—

"who now have or hath or."

shall or may have all or any part of the said sum of £—— in his, her, or their hands, or upon securities (*a*) to be given by him, her, or them (*b*), shall not be obliged or required to see the application or disposition of the same money or any part thereof, or the interest, dividends, and annual income thereof, or of any part thereof, after payment of the same to the person or persons who for the time being shall be the acting trustee or trustees under this settlement, or be answerable or accountable for the misapplication or nonapplication of the same money or any part thereof by him or them; and that all and every receipt and receipts which shall be given for the said trust monies or any part thereof, or the interest, dividends, and income of the same or any part thereof (*c*), by the person or persons who for the time being shall be the acting trustee or trustees under this settlement, shall be a good, effectual, and sufficient acquittance and discharge, or good, effectual, and sufficient acquittances and discharges for all and every sum and sums of money which therein and thereby respectively shall be acknowledged or expressed to be or to have been received.

thereof by the trustees, whose receipts shall be sufficient discharges.

(*a*) Or,—
"given or."

(*b*) Or,—
"or who shall become the purchaser or purchasers of all or any part of the said trust estates and property."

(*c*) Or,—
"or for such purchase money or any part thereof."

TITLE X.

OF COVENANTS.

Where each covenants for himself alone.

I. And the said A. B., so far as relates to his own acts and deeds only, but not further or otherwise, doth for himself, his heirs, executors, and administrators; and the said C. D., so far as relates to his own acts and deeds only, but not further or otherwise, doth for himself, his heirs, executors, and administrators.

Another form.

II. And each and every of them the said A. B., C. D., and E. F., so far as relates to his and her own acts and deeds only, but not further or otherwise, doth for himself and herself, his and her heirs, executors, and administrators.

By two jointly and severally.

III. And the said A. B. and C. D. do for themselves, their heirs, executors, and administrators, and each of them doth for himself, his heirs, executors, and administrators.

Another form.

IV. And the said A. B. and C. D. do hereby jointly for themselves, their heirs, executors, and administrators, and each of them severally doth hereby for himself, his heirs, executors, and administrators, covenant and declare to and with the said E. F., his heirs, appointees, and assigns, and also with his executors and administrators, in trust for his heirs, appointees, and assigns.

By two severally, and for wives, and as respects titles to distinct messuages.

V. And each of them the said A. B. and C. D. severally, separate and apart from the other of them, doth hereby for himself, his heirs, executors, and administrators, and as to and concerning only, and as far as relates to the said messuages &c., and the title thereto, and the acts, deeds, and defaults concerning the same, as far as he and his said wife respectively are interested in the same, or the money arising from the sale thereof, and so that neither of them the said A. B. and C. D., his heirs, executors, or administrators, may

be answerable or accountable for the acts, deeds, or defaults of the other of them, or his said wife, his or her heirs, executors, or administrators.

By three or more severally, as to their own acts and acts of wife.

VI. And each and every of them the said A. B., C. D., and E. F. severally, separate and apart from the others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself and herself respectively, and his and her respective executors and administrators, and also of his said wife, her heirs, executors, administrators, and assigns.

By two severally, as to their distinct shares.

VII. And each of them the said A. B. and C. D., severally, separate and apart from the other of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only his or her own fifth part or share of and in the said messuage &c. hereby released or otherwise assured, or intended so to be, and the acts, deeds, title, and default of himself and herself respectively, and of his and her respective heirs, executors, and administrators, and of the said E. F. and his heirs, so far as relates to or concerns the same fifth part.

By trustees for sale, but beneficially interested in some manner in the purchase money.

VIII. And each of them the said A. B. and C. D. covenanting for himself and herself, his and her respective heirs, executors, and administrators, and for the title, possession, and further assurance of the said manor and other hereditaments, so far only as they the said A. B. and C. D. are respectively interested in the premises, or in the consideration money thereof.

By joint tenants.

IX. And the said A. B., as to his estate and interest of and in the said manor and other hereditaments, doth for himself, his heirs, executors, and administrators, and for his and their acts and deeds only, but not further or otherwise; and the said C. D., as to his estate and interest of and in the said manor and other hereditaments, doth for himself, his heirs, executors, and administrators, and for his and their acts and deeds only, but not further or otherwise.

By co-parceners, or tenants in common.

X. And the said A. B., as to his share of and in the said manor and other hereditaments, doth for himself, his heirs, executors, and administrators, and for his and their own acts and deeds only, but not further or otherwise; and the said C. D., as to his share of and in the said manor and other hereditaments, doth for himself, his heirs, executors, and administrators, and for his and their own acts and deeds only, but not further or otherwise.

By several tenants in common in fee, one of whom was seised in right of his wife, as to their respective fourth parts.

XI. And each and every of them the said A. B., C. D., E. F., and G. H., severally, separate and apart from the others of them, doth hereby for himself respectively, and his respective heirs, executors, and administrators, and as to and concerning only the part or share of himself and his said wife respectively of and in the said manor and other hereditaments, and the acts, deeds, and defaults of himself and of his said wife respectively, and of his and her heirs, executors, and administrators, and of the said I. K., and the person or persons rightfully claiming or to claim by, from, under, or in trust for him, her, or them respectively, as far as the same acts, deeds, and defaults relate to or concern the respective shares or fourth parts of the said A. B., C. D., E. F., and G. H. respectively of and in the said messuages, &c.; and so that the said A. B., his heirs, executors, or administrators, may be answerable only for or to the value of the fourth part or share of him the said A. B.; and so that the said C. D., his heirs, executors, or administrators, may be answerable only for or to the value of the fourth part or share of him the said C. D.; and so that the said E. F., his heirs, executors, or administrators, may be answerable only for or to the value of the fourth part or share of him the said E. F.; and so that the said G. H., his heirs, executors, or administrators, may be answerable only for or to the value of the fourth part or share of him the said G. H.

By two vendors, each for an undivided moiety.

XII. And the said A. B., so far as relates to or concerns the said one undivided moiety or equal half part or share of and in the said messuages and other hereditaments, and the title, right to convey, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth for himself,

his heirs, executors, and administrators; and the said C. D., so far as relates to or concerns the other undivided moiety or equal half part or share of and in the said messuages and other hereditaments, and the title, right to convey, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth for himself, his heirs, executors, and administrators.

By husband, for himself and wife.

XIII. And the said A. B. doth for himself, his heirs, executors, and administrators, and for the said C. his wife, she hereby consenting thereto (*a*).

By a father for himself and wife, and by his son, jointly and severally.

XIV. And the said A. B. the father and C. B. the son do hereby for themselves, their heirs, executors, administrators, and each of them the said A. B. and C. B. doth for himself, his heirs, executors, and administrators, and the said A. B. the father doth also for the said E. his wife, her heirs, executors, and administrators (she the said E. B. hereby consenting thereto).

Where several appointors have different shares.

XV. And the said A. B., so far as relates to the validity of the aforesaid power of appointment over the one third part or share of the said S. his wife of and in the said messuages and other hereditaments, and title, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth hereby for himself, his heirs, executors, and administrators, and for the said S. his wife, and her heirs, (she the said S. B. hereby consenting thereto); and the said C. D., so far as relates to the aforesaid power of appointment over the said one third part or share of her the said C. D. of and in the same messuages and other hereditaments, and the title, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth for herself, her heirs, executors, and administrators; and each of them the said E. F. and G. H., (the said E. F. covenanting only for the life estate of the said E. his wife, and the said G. H. for the

(*a*) Or, if the estate be the wife's,—

"and her heirs, she the said C. B. hereby consenting thereto."

remainder in fee expectant thereon), so far as relates to the title, quiet enjoyment, freedom from incumbrances, and further assurance of the said one third part or share devised by the will of the said I. K., of and in the said messuages and other hereditaments, doth for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said L. M., his heirs and assigns, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, (so far as relates to the said first-mentioned third part or share of and in the said messuages and other hereditaments), by the said A. B. and S. his wife, or either of them, or by the said B. B., her late grandfather, deceased, or any person claiming under him, them, or any or either of them; and (so far as relates to the second-mentioned one third part or share of and in the same messuages and other hereditaments) by the said C. D. or D. D. her late father, deceased, or any person or persons claiming under him or her; and (so far as relates to the third-mentioned one third part or share of and in the same messuages and other hereditaments) by the said E. F. and E. his wife, and the said G. H., or any or either of them, or the said I. K. the testator, made, done, committed, or executed, or knowingly or wittingly suffered to the contrary, the several powers and authorities hereinbefore exercised were respectively well and effectually created &c.

By two as to their distinct interests.

XVI. And each of them the said A. B. and C. D. doth for himself and herself, and his and her heirs, executors, and administrators; nevertheless, so only that each of them the said A. B. and C. D. respectively, and his and her heirs, executors, and administrators, may be answerable proportionably, according to the value of the interest of each of them the said A. B. and C. D. respectively in the premises (*a*).

(*a*) Or,—

"nevertheless, so only as to the value of the benefit and interest of the said E. his wife in the residue of the personal estate of the said G. H."

By one for himself and wife, trustees, &c. and several other persons as to a moiety; another for herself, and another as to a moiety.

XVII. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself and his said wife, his and her heirs, executors, administrators, and trustees; and the said C. D. and other persons hereinafter named, as far only as relates to the undivided moiety or half part of the said C. D. of and in the messuage or curtilage, tan house, tan yard, yearly rents, and premises hereby released or otherwise assured, or intended so to be; and the said E. F. doth hereby for herself, her heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of herself, her heirs, executors, administrators, and trustees; and the said G. H. and other persons hereinafter named, as far only as relates to the undivided moiety or half part of the said G. H. of and in the same messuage or curtilage and other premises.

By intended husband and wife severally as to their own acts.

XVIII. And the said A. B. doth hereby for herself, her heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of herself, her heirs, executors, and administrators; and the said C. D. doth hereby for himself, his heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself, his heirs, executors, and administrators.

By one as to hereditaments conveyed by him; by several others as to their shares of different premises, and by man and his wife for share of wife.

XIX. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, and as far only as relates to the hereditaments hereinbefore conveyed by him, and the acts, deeds, defaults, and title of himself (*a*) and his ancestors and testators and the said C. D., relating thereto; and each and every of them the said E. F., G. H., and I. K. doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as well as to and concerning his and her share of and in the said messuages &c., called A., as his and her share of and in the said coach-house and other hereditaments, and the acts,

(*a*) Or,—
" and those claiming under him."

deeds, and defaults relating thereto; and the said L. M. doth hereby for himself, his heirs, executors, and administrators, as to and concerning the part or share of himself and the said A. his wife of and in all the same hereditaments and premises, and the acts, deeds, and defaults relating thereto, and to the said covenantors or any of them, no further or otherwise.

By several separately, and one for his wife, as to amount of respective share of purchase money, and for the acts and title of testator rateably, according to his or her proportion.

XX. And each and every of them the said A. B., C. D., and E. F. severally, separate and apart from the others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself and herself respectively, and his said wife, and his and her heirs, executors, administrators, and trustees, and so only as to be answerable for and to the amount of his or her share or proportion of the said purchase money, according to his or her interest, right, or title therein or thereto, under or by virtue of the said will, and so only as to be answerable for the acts, deeds, and title of the said I. K., [*the testator*], rateably, according to his or her proportion or share of the same purchase money.

By each of several as to the interests of wives in the real and personal assets of testator.

XXI. And each and every of them the said A. B., C. D., and E. F., severally, separate and apart from the others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and so only as to be answerable as far as and to the extent that he or she respectively, in his or her own right or in right of his said wife, is interested in the real or personal assets of the said G. H. and I. K. deceased, and each or either of them, and so that neither of them the said A. B., C. D., and E. F., his or her heirs, executors, or administrators, may be answerable or accountable for the acts, deeds, or defaults of the other of them, his or her heirs, executors, or administrators; and so that neither of them the said A. B. and C. D., his heirs, executors, or administrators, may be answerable as to the acts, deeds, or defaults of their respective wives, their heirs, executors, and administrators, otherwise than for and as to the acts, deeds, and defaults of

his own respective wife, her executors, administrators, or assigns.

By several persons entitled to the purchase money.

XXII. And each and every of them the said A. B., C. D., and E. F., so far as he respectively is interested in the said messuages and other hereditaments, or the consideration money for the same, doth for himself, his heirs, executors, and administrators; and the said C. D., so far as he and the said G. his wife are, or either of them is, interested in the said messuage and other hereditaments, or the consideration money for the same, doth for himself, his heirs, executors, and administrators.

By one to be answerable only in proportion to one-sixth part, being the share of himself or wife in the purchase money.

XXIII. And the said A. B. doth, for himself, his heirs, executors, and administrators, so as to be answerable and accountable only to the extent of one-sixth of the damages which can be recovered under or virtue of the covenant hereinafter contained, (being in proportion to the share and interest of himself or his said wife in the purchase money arising from the sales to be made under the trusts reposed in the said C. D. as aforesaid).

Where vendors are interested in estate, and some in money charged upon it, or their estates are various.

XXIV. And each and every of them the said A. B., C. D., and E. F., so far as he is interested in the premises or the consideration monies for the same, doth for himself, his heirs, executors, and administrators.

By two as to their separate third parts.

XXV. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, and as to and concerning only the third part or share and title of him the said A. B., and the acts, deeds, and defaults of himself, his heirs, executors, and administrators, and all persons claiming or to claim by, from, under, or in trust for him or them as far as concerns the same share and title; and the said C. D. doth hereby for himself, his heirs, executors, and administrators, and as to and concerning only the third part or share and title of him the said C. D., and the acts, deeds, and defaults of himself, his heirs, executors, and administrators, and all persons claiming or to claim by, from, under, or in trust for him or them, as far as concerns the same share and title.

By two severally as to respective fourth parts, and by another as to a moiety.

XXVI. And each of them the said A. B. and C. D., severally, separate and apart from the other of them, doth hereby for herself respectively, and her respective heirs, executors, and administrators, and as to and concerning only and as far only as relates to her fourth part or share of and in the said messuages &c. hereby granted and released, or intended so to be, and the acts, deeds, and defaults of herself, her heirs, executors, administrators, and trustees, and of the said E. F. and G. H. respectively, concerning the same fourth part or share, and so only as to be answerable for the value of the same part or share; and the said I. K. doth hereby for himself, his heirs, executors, and administrators, and as to and concerning only and as far only as relates to his undivided moiety or full half part of and in the same messuages &c., and the acts, deeds, and defaults of himself, his heirs, executors, administrators, and trustees, and of the said E. F. and G. H. respectively, concerning the same undivided moiety or half part or share, and so only as to be answerable for the value of the same moiety, half part, or share.

By three severally: one as to estate for life, and annuity of his wife, and his and her acts, &c.; the second as to share late of his wife, and his and her acts &c.; and the third in like manner as the second.

XXVII. And each and every of them the said A. B., C. D., and E. F., severally, separate and apart from the others of them, doth hereby for himself respectively, and his respective heirs, executors, and administrators, and so and in such manner only that the said A. B., his executors or administrators, may be answerable for and to the value of the estate for life and annuity or rent-charge of the said E. his wife, and the acts, deeds, and defaults of himself and his said wife, as far as relates to the same estate for life and annuity or rent-charge; and that the said C. D., his heirs, executors, and administrators, may be answerable only for and to the value of the part or share late of the said F. his wife, and the acts, deeds, and defaults of himself and his said wife, and his and her heirs and issue, and her ancestors or testators, as far as relates to the same part or share; and that the said E. F., his heirs, executors, and administrators, may be answerable only for and to the value of the part or share of the said G. his wife, and the acts, deeds, and defaults of himself and his said wife, and her heirs and issue,

and her ancestors or testators, as far as relates to the same part or share.

By three or more severally, as to their own shares or shares of their wives.

XXVIII. And each and every of them the said A.B., C.D., and E. F., severally, separate and apart from the others of them, doth hereby for himself respectively, and his respective heirs, executors, and administrators, and as and to and concerning only the parts or shares now or late of themselves respectively, and of their said wives, in right of their said wives, of and in the said messuages &c. hereby released or otherwise assured, considered as divided into ten parts in fee by the will of the said G. H., and devised under the same will, and the powers which authorized an appointment by will, and the acts, deeds, and defaults, and title relating to or concerning the same parts or shares of themselves, or of themselves and their several wives, in right of their said wives.

By three severally as to their own respective shares in three undivided fourth parts.

XXIX. And each and every of them the said A. B., C. D., and E. F. severally, separate and apart from the others of them, doth by these presents for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to, for, and concerning, and only as to, for, and concerning the acts and deeds of himself and herself respectively, and his and her respective heirs, executors, administrators, and of all persons claiming or to claim by, from, under, or in trust for him, her, or them respectively; and so that each and every of them the said A. B., C. D., and E. F. respectively, and his and her respective heirs, executors, and administrators, may be answerable only for his or her respective share, right, title, and interest of and in three undivided fourth parts of and in the messuages &c. hereby released or otherwise assured, or intended so to be, and the value of the same three undivided fourth parts.

By three severally as to his, her, or their share; by two jointly and severally as to their proportion, and by one as

XXX. And each of them the said A. B., C. D., and E. F., severally, separate and apart from the others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of

to acts of himself and wife, and his or her proportion.

himself or herself respectively, and his or her heirs, executors, and administrators, and so far only as concerns his, her, or their proportion, part, or share of and in the said messuages, &c.; And the said G. H. and I. K. do by these presents jointly, for themselves, their heirs, executors, and administrators, and each of them severally, separate and apart from the other of them, doth hereby for himself, his heirs, executors, and administrators, and as to, for, and concerning, and only as to, for, and concerning the acts, deeds, and defaults of them the said G. H. and I. K., and their respective heirs, executors, and administrators, and their proportions, parts, and shares of the said messuages &c.; And the said L. M. doth hereby for himself, his heirs, executors, and administrators, and as to, for, and concerning the acts, deeds, and defaults of himself and the said N. his wife, his and her heirs, executors, and administrators, and as far only as concerns his or her said portion, part, or share of the said messuages &c.

By each of four with the remaining three, jointly and severally.

XXXI. And each of them the said A. B., C. D., E. F., and G. H., severally, separate and apart from the others of them, doth hereby for himself, his heirs, executors, and administrators, and as to, for, and concerning only the acts, deeds, and defaults of himself, his heirs, executors, administrators, and assigns, covenant and declare to and with the others of them jointly, their executors, and administrators, and assigns, and to and with each of the others of them severally, his heirs, executors, administrators, and assigns; so and in such manner that any one, two, or three of the others of them the said A. B., C. D., E. F., and G. H., or the executors or administrators of each of them respectively, or the executors or administrators of the survivors or survivor of any two or three of them, may be entitled to maintain an action upon the covenant of each of them the said A. B., C. D., E. F., and G. H., when and if the same covenant shall be broken.

By each of two with the other, and also separately from such other, with two others (copart-

XXXII. And each of them the said A. B. and C. D. doth by these presents, for himself, his heirs, executors, and administrators, covenant with the other of them, his executors and administrators, and also separately from such other,

with the said E. F. and G. H., their executors and administrators; and the said E. F. and G. H. do hereby jointly for themselves, their heirs, executors, and administrators, and each of them severally, separate and apart from the other of them, doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree with the said A. B. and C. D., their executors and administrators, and to and with each of them separately, his executors and administrators.

ners); and by the said copartners jointly and severally, with the two jointly, and with each of the two severally.

XXXIII. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, as far as relates to and concerns the three undivided fourth parts of the said A. B. and C. his wife, of and in the said messuages or tenements and hereditaments hereby released or otherwise assured, or intended so to be, and the title to the same three undivided fourth parts, and the acts, deeds, and defaults relating thereto, and so only as to be answerable for and to the value of the same three undivided fourth parts; And the said C. D. doth hereby for herself, her heirs, executors, and administrators, as far as relates to or concerns the undivided fourth part of the said C. D. of and in the same messuages or tenements and hereditaments, and the title to the same undivided fourth part, and the acts, deeds, and defaults relating thereto, and so only as to be answerable for and to the value of the same one fourth part.

By several persons entitled to lands in equal shares.

XXXIV. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, and as to, for, and concerning only and as far as relates to the title under his estate for life, and remainder or reversion in fee, and the acts, deeds, and defaults relating thereto.

By one as to his estate for life, and remainder or reversion in fee.

XXXV. And the said A. B., so far as relates to or concerns his estate for life of and in the said messuages and other hereditaments, and the title, right to convey, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth for himself, his heirs, executors, and administrators; and the said C. D., so far as relates to or concerns his estate in remainder after the death of the said

Where the vendors have different estates, as one an estate for life, and the other a remainder in fee.

A. B., of and in the said messuages and other hereditaments, and the title, right to convey, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth for himself, his heirs, executors, and administrators.

By tenant for life, and remainder-men in fee &c., each as to the acts, and for the estate and interest of himself and his trustees.

XXXVI. And the said A. B. doth hereby for herself, her heirs, executors, and administrators, and as to and concerning only her life estate in the premises, and the acts and deeds which relate to or concern the same life estate or the value thereof; and each of them the said C. D., E. F., and G. H., severally, separate and apart from the other of them, doth hereby for himself respectively, and his respective heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself and of his said wife respectively, and of his or her heirs, executors, and administrators, and the person or persons rightfully claiming or to claim by, from, under, or in trust for him, her, or them respectively, as far as the same acts, deeds, and defaults relate to or concern the moieties or parts or shares of the said C. D., E. F., and G. H. respectively, or their respective trustees, of and in the said messuages &c. hereby released &c., and so that the said C. D., his heirs, executors, or administrators, may be answerable only for or to the value of the moiety, half part, or share of them the said C. D. and M. his wife, and their trustees; and so that the said E. F. may be answerable only for or to the value of the share, estate, and interest of him the said E. F. and his trustees, and the said G. H., his heirs, executors, or administrators, may be answerable only for or to the value of the moiety, half part, or share of them the said G. H. and A. his wife, and their trustees.

By tenant for life, and remainder-man in fee.

XXXVII. And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, and so only that he and they may be answerable for and to the extent of the value of an estate for his life in the said messuages &c. hereby released or otherwise assured, or intended so to be, and the acts, deeds, and defaults relating thereto; And the said C. D. doth hereby, for himself, his heirs, executors, and administrators, and so only that he and they may be answer-

able for the title to the same messuages &c. as and for an estate after and expectant on the death of the said A. B. (a)

By tenant for life and remainder-man. (Another form).

XXXVIII. And each of them the said A. B. and C. D., severally, separate and apart from the other of them, doth hereby, for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only and as far only as relates to his and her estate and interest respectively in the said messuages or tenements, farms, closes of land, hereditaments, and premises, and the acts and deeds which relate thereto, and so only as to be answerable for and to the value of the same estate.

By a tenant for life and reversioner severally.

XXXIX. And the said A. B. doth hereby, for herself, her heirs, executors, and administrators, and as to and concerning only her life estate in the premises, and the acts and deeds which relate to or concern the same life estate or the value thereof; And the said C. D. doth hereby, for himself, his heirs, executors, and administrators, and as to and concerning only his estate or interest in the premises, and the acts and deeds which relate to or concern the same estate or interest, or the value thereof.

By tenant for life, and tenant in tail, where the estate was vested in trustees for sale by act of parliament.

XL. And each of them the said A. B. and C. D., severally, separate and apart from the other of them, doth hereby, for himself, his heirs, executors, and administrators, and each of them, only as to and concerning and as far only as relates to the estate, right, and interest which he respectively had in the messuage &c. hereby released or otherwise assured, or intended so to be, when the said Act of Parliament was passed, and so only as to be answerable as to the acts, deeds, and defaults relating to the same estate.

By one as to fee simple in certain lands

XLI. And the said A. B. doth, by these presents, for himself, his heirs, executors, and administrators, and as to

(a) The same Form may be adopted on a sale by a trustee in whom the legal estate is vested in trust for sale, A. B. and C. D. being beneficially interested in the produce, and being, prior to the conveyance in trust for sale, tenant for life and remainder-man in fee.

and estate for life in others; and by another as to reversion in same lands, expectant on death, &c.

and concerning only the said close and hereditaments called &c., with the appurtenances, and the fee-simple and inheritance thereof, and the estate and beneficial interest for the life of the said A. B. in the messuages, lands, and hereditaments secondly hereby released or otherwise assured, or intended so to be, and the acts, deeds, and defaults of himself, his heirs, executors, and administrators, and of all persons claiming or to claim under or in trust for him or them, or the said C. D. or E. F., relating to or concerning the same closes and estate for life; And the said G. H. doth hereby, for himself, his heirs, executors, and administrators, and as to, for, and concerning the beneficial interest of and in the fee-simple of the said messuage, lands, and hereditaments secondly hereby released or otherwise assured, or intended so to be, expectant on the death of the said A. B., and the acts, deeds, and defaults of himself, his heirs, executors, and administrators, and of the said C. D. and E. F., and of all persons claiming or to claim under or in trust for him or them, relating to or concerning the same beneficial interest expectant as aforesaid.

When leasehold lands are assigned, and copyhold lands covenanted to be surrendered, in the same deed.

XLII. And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said C. D. and E. F., their executors, administrators, and assigns, as far as relates to or concerns the said messuages &c. hereby assigned or otherwise assured, or intended so to be, and with the said G. H. and I. K., their heirs and assigns, as far as relates to or concerns the said copyhold messuages &c. hereby covenanted to be surrendered or otherwise assured, or intended so to be.

By several persons, each as to different estates.

XLIII. And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, and as far only as relates to or concerns the said messuages &c., situate in &c., and first hereby released or otherwise assured, or intended so to be, and the acts, deeds, defaults, and title relating thereto; and the said C. D. doth hereby, for herself, her heirs, executors, and administrators, and as far only as relates to or concerns the said messuages &c., situate in &c., and secondly

hereby released or otherwise assured, or intended so to be, and the acts, deeds, defaults, and title relating thereto.

By several persons, as to different estates for seisin.

XLIV. And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant, declare, and agree, to and with the said C. D., her heirs and assigns, that notwithstanding any act, deed, matter, or thing whatsoever, made, done, committed, executed, or willingly or knowingly permitted or suffered to the contrary by the said A. B., or any of his trustees (except as hereinafter is excepted), they the said C. D. &c., or some or one of them, as to the manors &c. first hereinbefore released or otherwise assured, or intended so to be; and the said E. F. &c., or one of them, as to the said messuages &c. secondly hereinbefore released or otherwise assured, or intended so to be; and the said G. H. &c., as to the said messuages &c. thirdly hereinbefore released or otherwise assured, or intended so to be; and the said I. K. &c. respectively, as to the said copyhold messuages &c. vested in them respectively, and hereinbefore covenanted to be surrendered, are or is seised to him or them, or his or their heirs, of the same manors &c. respectively, of a good, sure, lawful, absolute, and indefeasible estate of inheritance in fee-simple, according to the nature of the tenure thereof, without any condition &c.

For title to freeholds, in releases in fee. (*In purchase deeds*).

That vendor is seised in fee.

XLV. Covenant, promise, and agree with and to the said A. B., his heirs and assigns, by these presents in manner following; that is to say, that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said C. D., or the said E. F. the testator (*a*), or any person claiming under

(*a*) With respect to the persons against whose acts a vendor is bound to covenant, the following rules must be observed:—

1st. Where the vendor was himself the purchaser, and obtained proper covenants for title, then he is not bound to enter into covenants extending beyond his own acts. 14 Ves. 239.

2ndly. Where the vendor was not himself the purchaser, but acquired the estate either as heir or devisee, or under a voluntary settlement, then he is bound, at least according to the practice of conveyancers, to enter into covenants extending to the acts of the last purchaser, whether ancestor, testator, or settlor, or otherwise, as the case may be.

him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, (except as appears by these presents), he the said C. D. is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and every of them, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance in fee-simple, without any manner of condition, use, trust, property, power of revocation, equity of redemption, remainder or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; and that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with the appurtenances thereunto belonging, unto and to the use of the said A. B., his heirs and assigns, in manner afore-

Has right to convey.

3rdly. Where an estate is sold by trustees, they are bound only to covenant that they themselves have done no act to incumber, and not for the title generally. But the persons entitled to receive the purchase-money, unless such persons are creditors, (the estate being sold for the payment of debts), are bound, at least according to the practice of conveyancers, to covenant for the title as if they themselves were the vendors. For Form of lien of covenant in such case, vide art. xxii.

4thly. Where an estate is sold under a fiat of bankruptcy, the assignees (who are in fact trustees for the creditors) are bound only to covenant against incumbrances according to the foregoing rule. The bankrupt, however, is always made a party to the conveyance, (vide Vol. I. book ii. chap. i.), and usually covenants for the title. Sugd. Vend. & Pur. i. 534—539.

With respect to the *construction* of covenants, the student is referred to the chapter on covenants in the second book of Vol. I. As to what covenants run with the land, vide *Spencer's case*, in Smith's Selection of Leading Cases, i. 27, with the editor's acute and learned commentary.

For Forms of defeazance to covenants for title in order to limit them, as to one of the parties, vide PRECEDENTS, tit. Auxiliary Instruments.

said, and according to the true intent and meaning of these presents (*a*); and that it shall and may be lawful to and for

For quiet enjoyment.

(*a*) In a grant of an advowson, add the following instead of the common covenant for quiet enjoyment:—

1. "And also that, notwithstanding any such act, deed, matter, or thing as aforesaid (except as aforesaid), upon every future avoidance of the said parish churches respectively, it shall or may be lawful to and for the said A. B., his heirs, appointees, and assigns, to appoint and nominate fit and proper clerks, or a clerk, to be the incumbents or incumbent of the said parish churches respectively, to be duly instituted and inducted into the same churches respectively, as the lawful incumbent or incumbents thereof respectively; and that notwithstanding any such act, deed, matter, or thing as aforesaid (except as aforesaid), the clerks so presented or nominated shall or may hold and enjoy the said churches respectively, and the glebe thereof, and the tithes (vide stat. 6 & 7 Will. 4, c. 71), or annual sum or rent-charge in lieu of tithes, and other emoluments belonging thereto, without any let, suit, trouble, eviction," &c.

When, in a grant of an advowson, an alternate right of presentation is given, then, instead of the above, insert the following:—

2. "And also that, notwithstanding any such act, deed, matter, or thing as aforesaid (except as aforesaid), it shall and may be lawful to and for the said A. B., his heirs and assigns, on the first and next vacancy that may happen by the death, resignation, deprivation, cession, or change of the said E. F., the present incumbent of the rectory and parish church of A. aforesaid, to present some well-qualified clerk to succeed in the said church as the rector or parson thereof; and from thenceforth and for ever thereafter, whenever the said church of A. shall or may become vacant by the death, resignation, deprivation, cession, or change of all or any of the future rectors or incumbents thereof, to present, in perpetual alternate turns with the two other proprietors of the other moiety of the said advowson, some other well-qualified clerk to succeed in the said church as the rector or parson thereof, and to do all other acts which to the office of patron of the said rectory doth of right

the said A. B., his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their proper use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of or by him the said C. D. or his heirs, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged; or otherwise, by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D. or his heirs, or by any person or persons lawfully or equitably claiming or to claim by, from,

Free from incumbrances.

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belong and appertain, as fully and amply as the said C. D., his heirs or assigns, might or could do if these presents had not been made, without any lawful let, suit, trouble, hindrance, molestation, interruption, claim, or demand of, from, or by the said C. D., or his heirs, or any other person or persons whomsoever, lawfully claiming or to claim by, from, under, or in trust for him or them."

or under, or in trust for him, them, or any of them, or by the said E. F. the testator, or any person claiming under him, (save and except &c.) (*a*); and further that he the

And for further assurance.

(*a*) 1. "Save and except a certain mortgage or security dated the &c., whereby the sum of £—— is secured to be paid out of the said manors, tenements, and hereditaments, to A. B. of &c., together with lawful interest for the same, as therein mentioned; and which said sum of £—— is now the property of C. D. of &c., by virtue of or under a certain deed poll, or instrument in writing, under the hand and seal of the said A. B., indorsed on the said last-mentioned indenture, and dated the &c.; upon which said principal sum of £—— there will be one year's interest due on the &c. now next ensuing."

FORMS OF EXCEPTIONS. Mortgage.

This Form, it will be observed, applies only where the incumbrance has not been previously mentioned. If the estate be conveyed subject to the mortgage (as is usually the case), the exception may be by words of reference, as, "save and except as hereinbefore is mentioned."

2. "Save and except an annuity or yearly rent-charge of £——, which under or by virtue of the last will and testament of the said A. B. is charged or chargeable upon the said hereditaments and premises, or some of them, for the life of" &c.

Annuity under a will.

3. "Save and except an annuity or clear yearly rent-charge of £——, which by an indenture bearing date on or about the &c., and made or expressed to be made between &c., was granted by the said A. B. to the said C. D. for ninety-nine years, determinable on the decease of the said C. D., and the powers and remedies given for enforcing and compelling the payment thereof."

Annuity under an indenture.

4. "Save and except such annuities or yearly rent-charges, not exceeding £—— a year, as have been granted by the said A. B. for his life, or for years determinable on his decease, and such leases and terms of years as have been granted by, and judgments as have been obtained against him for securing the said annuities or any of them, and such terms of years, not exceeding —— years to any one tenant, as have been granted by the said A. B. of the premises re-

Annuities, judgments, and terms of years.

said C. D. and his heirs, and all and every other persons or person having or claiming, or who shall or may have or

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FORMS OF EXCEPTIONS.

spectively, to the respective tenants thereof, at the several and respective rents hereinbefore mentioned, reserved, and contained, payable yearly, or oftener during the continuance of the same leases respectively."

Proportion of composition tithe rent, and of a fee-farm rent.

5. "Save and except the annual sum of —— shillings, being the proportion agreed to be paid by the said A. B, his heirs, appointees, and assigns, of a certain composition tithe rent of £—— payable to &c. in respect of the said close and hereditaments, together with other hereditaments of the said A. B.; and the further annual sum of —— pence, being the proportion agreed to be paid by the said A. B., his heirs, appointees, and assigns, of a fee-farm rent of —— shillings charged upon the said close and hereditaments hereby released or otherwise assured, together with other hereditaments of the said A. B."

Duty of repairing a chancel, and an annual payment.

6. "Save and except the duty or obligation of upholding, supporting, repairing, and maintaining the chancel of the parish church of A., and also the payment of the said sum of £——, payable on &c. in every year, to the vicar of the vicarage of B. aforesaid."

Suits, services, and rents.

7. "Save and except the suits and services due, and of right accustomed to be performed to the lord or lords of the fee of the said manor, &c., and the rents which shall henceforth become due and payable to the same lord or lords, not exceeding —— shillings."

In enfranchisement.

8. "Save and except the copyhold or customary tenure of the said A. B. of and in the said messuage &c., and which is hereby intended to be extinguished."

Charges apparent, leases, and outstanding terms. (In settlement by indorsement).

9. "Save and except such estates and incumbrances as appear on the face of the within written indenture, and also such leases for years as have been granted at any time or times heretofore at improved rents, reserved to be paid, and continuing payable, yearly or oftener during the continuance of the same leases; and also such terms for years, if any, as are outstanding, or as shall be assigned to trustees of the nomination of the said A. B. and C. D., their heirs or assigns, to

claim any estate, right, title, interest, inheritance, use, trust property, claim, and demand whatsoever, either at law or in

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protect the reversion and inheritance of the messuages, &c., as by the within written indenture were conveyed or agreed to be settled as aforesaid, from mesne charges and incumbrances." FORMS OF EXCEPTIONS.

10. "Save and except the dues and other payments which belong to the Honourable Society of Lincoln's Inn in respect of the said chambers." In a conveyance of chambers in an inn of court.

11. "Save and except the rents, covenants, provisoes, conditions, and agreements reserved and contained in the said recited indentures of lease on the tenant's or lessee's part to be henceforth paid, done, observed, performed, fulfilled, and kept." In assignments of leaseholds.

12. "Save and except such leases for twenty-one years, or any less number of years, as have been granted by the said A. B., of the said premises or any part thereof at full improved rents, reserved to be paid, and continuing payable yearly or oftener during the term or terms of the same leases respectively." Leases.

Or,—

"Save and except such leases for terms of years not exceeding twenty-one years to any one person, as have been granted to the present tenant or occupier of the same premises respectively, or any part thereof, or to those under whom they claim, at rents amounting together to £—— a year, reserved to be paid and continuing payable yearly, or oftener during the continuance of the estate granted by the same leases respectively."

13. "Save and except the leases and agreements for leases under which the said towns, lands, and hereditaments hereby released or otherwise assured, or intended so to be, or any part thereof, are held by the respective tenants or occupiers of the same hereditaments; yet so nevertheless, that nothing contained in these presents shall, without the express consent in writing of the said A. B., affirm or give effect, or in any manner be construed to affirm or give effect, to the same leases and agreements for leases at law or in equity, any further or otherwise than as such leases and Leases and agreements for leases, but not to operate as a confirmation thereof.

equity, of, in, to, from, or out of the said messuage, lands, and other hereditaments hereinbefore granted and released,

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FORMS OF EXCEPTIONS.

agreements are valid, at law or in equity, at the time of the execution of these presents."

Instead of this last provision, the following is sometimes introduced immediately after the covenants:—

"And it is hereby provided, declared, and agreed by and between the parties to these presents, that nothing hereinbefore contained is meant or intended to be a confirmation, either at law or in equity, of any lease or leases hereinbefore mentioned any further or otherwise than as the said A. B. is bound by the same lease or leases respectively."

Estate for life, and lease of tenement for life.

14. "Save and except the estate therein for the life of the said C. D., and the lease granted by the said A. B., as far as the same lease is warranted by an estate for the life of the said C. D., but no further or otherwise."

Estate for life in lands of devisee.

15. "Save and except the estate for the life of the said C. D., of and in such and so many of the said lands and hereditaments as were devised to her as aforesaid, and the rents &c."

Outstanding terms.

16. "Save and except such terms of years as are outstanding, to protect the freehold inheritance of the same premises from mesne incumbrances for the benefit of the said A. B., his heirs, appointees, and assigns."

Or,—

"Save and except such terms for years, if any, as are outstanding, and in trustees to protect the reversion and inheritance of the said A. B. hereby released or otherwise assured or intended so to be, or any of them, as the same reversion and inheritance are hereby conveyed, settled, and assigned, or intended so to be."

Land-tax, leases, and outstanding terms.

17. "Save and except the land-tax, the leases of the present tenants or occupiers, and the terms, if any, outstanding, in trust for the said A. B., his heirs and assigns, to attend the inheritance."

Attendant terms, and land-tax.

18. "Save and except such term or terms of years, if any, in the said closes, &c. as is or are now vested in or shall forthwith be assigned to any person or persons, in trust to

or expressed and intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for him the said C. D., or his heirs, or by, from, or under the said E. F. the testator, shall and will from time to time, and at all times hereafter upon every reasonable request to be made for that purpose, by, with, and at the proper costs, charges, and expenses in the law of the said A. B., his heirs or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances (*a*) in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring of the said messuage, lands, and other hereditaments hereinbefore granted and released or expressed and intended so to be, and every of them, and every part thereof with their appurtenances, unto and to the use of the said A. B., his heirs and assigns forever, (subject as hereinbefore is mentioned), as by the said A. B., his heirs or assigns, or his or their counsel in the law, shall be reasonably (*b*) advised or devised and required.

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attend the freehold reversion and inheritance of the premises, as the same freehold reversion and inheritance are hereby released or otherwise assured, or intended so to be, and the land-tax now charged upon or payable in respect of the same premises, and which shall henceforth become due and payable for the same premises."

As it is not unusual with some practitioners to except attendant as well as outstanding terms, which are, strictly speaking, legal incumbrances, I have introduced a Form for this purpose. The student must be apprised, however, that though the practice alluded to wants not the authority of great names in its support, it has been strongly condemned by Sir Edward Sugden, in his Treatise on Vend. & Pur. i. 469, where he observes that "this practice is very incorrect, for the term is a protection, and not an incumbrance; and the exception in the conveyance effectually defeats the advantages which might otherwise be derived from the term being assigned by a separate deed."

(*a*) Vide *Coles* v. *Kinder*, Cro. Jac. 571.

(*b*) Vide *More* v. *Roswell*, Cro. Eliz. 298; *Bennett's Case*, Ib. 9.

For title to freeholds in release to uses. (*In purchase deeds*).

XLVI. Covenant, promise, and agree, with and to the said A. B. and his heirs, by these presents in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said C. D., or the said E. F. the testator, or (*a*) any person claiming under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, they the said C. D., G. H., and I. K. are, or some or one of them is at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and every of them and every part thereof with their appurtenances, of a good, sure, lawful, perfect, absolute, and indefeasible estate of inheritance, in fee simple, without any manner of condition, use, trust property, power of revocation, equity of redemption, remainder or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; and that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said C. D., G. H., and I. K. now have in themselves respectively good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with the appurtenances to the uses hereinbefore expressed or declared of or concerning the same in manner aforesaid, and according to the true intent and meaning of these presents; and that the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, shall and may from time to time, and at all times hereafter, go and remain to the uses hereinbefore expressed or declared of and concerning the same, and be peaceably and quietly entered into and upon, held, used, occupied, possessed, or enjoyed, and the rents, issues, and profits thereof, and of every part thereof, had, received,

That vendor and his trustees are seised in fee.

Have good right to convey.

For quiet enjoyment.

(*a*) As to the persons against whose acts a vendor is bound to covenant, vide Tit. X. art. xlv. note.

and taken accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, by him the said C. D. or his heirs, or of or by any other person or persons lawfully or equitably claiming, or to claim by, from, or under, or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged; or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered, by the said C. D. or his heirs, or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them, or by the said E. F. the testator, or any person claiming under him, (except &c. (*a*)); And further that he the said C. D. and his heirs, and all and every other persons or person having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust property, claim or demand whatsoever, either at law or in equity, of, into, from, or out of the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under or in trust for him the said C. D. or his heirs, or by, from, or under the said E. F. the testator, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with, and at the proper costs

Free from incumbrances.

And for further assurance.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

and charges in the law of the said A. B., his heirs, appointees, or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and every of them, and every part thereof, with their appurtenances, (subject as hereinbefore is mentioned), to the uses hereinbefore expressed or declared of or concerning the same, as by the said A. B., his heirs, appointees, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required.

For title to freeholds in release to uses. (*Short form in purchase deeds.*)

XLVII. Covenant and agree with the said A. B. and his heirs by these presents in manner following; (that is to say), that notwithstanding any act by him the said C. D., or the said E. F. the testator (*a*), or any person claiming under him, done or suffered to the contrary, (except as appears by these presents), he the said C. D. is lawfully seised of the messuage and other hereditaments hereinbefore released, or expressed and intended so to be, with their appurtenances in fee simple, free from all incumbrances; and that notwithstanding any act as aforesaid, he the said C. D. now hath full power to grant and release the said messuage and other hereditaments hereinbefore released, or expressed and intended so to be, with their appurtenances, to the uses hereinbefore declared in manner aforesaid; and that the said messuage and other hereditaments, with their appurtenances, shall at all times hereafter remain to the uses hereinbefore declared, and be peaceably enjoyed, and the rents, issues, and profits received accordingly, without any interruption by him the said C. D., or his heirs, or by any other person or persons lawfully or equitably claiming or to claim by, from, or

That vendor is seised in fee.

Has right to convey.

For quiet enjoyment.

(*a*) As to the persons against whose acts a vendor is bound to covenant, vide Tit. X. art. xlv. note.

under, or in trust for him or them, or by, from, or under the said E. F. the testator; and that absolutely discharged, or otherwise by the said C. D., his heirs, executors, or administrators, indemnified from and against all former and other conveyances, charges, and incumbrances, made or suffered to be made or suffered by him the said C. D., or his heirs, or by any other person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for him or them, or by the said E. F. the testator, or any person claiming under him, (except &c. (*a*)); And further that he the said C. D., and his heirs, and all other persons claiming, or to claim by, from, or under, or in trust for him the said C. D., or his heirs, or by, from, or under the said E. F. the testator, shall and will, at the request and at the expense of the said A. B., his heirs, appointees, or assigns, execute all such further assurances for granting, conveying, and assuring of the said messuage and other hereditaments hereinbefore released, or expressed and intended so to be, with their appurtenances, to the uses hereinbefore declared in manner aforesaid, as by the said A. B., his heirs, appointees, or assigns, or his or their counsel in the law, shall be reasonably required.

Free from incumbrances.

And for further assurance.

XLVIII. Covenant and agree with the said A. B., his heirs, appointees, and assigns, that notwithstanding any act done or suffered by him the said C. D., or any of his ancestors (*b*), to the contrary thereof, he the said C. D. is lawfully seised of and in the hereditaments hereby released in fee simple, free from all incumbrances; and that notwithstanding any such act as aforesaid, he the said C. D. hath full power to grant and release the premises, to the uses hereinbefore limited in manner aforesaid; and that the said hereditaments and premises shall go, remain, and be to the uses hereinbefore limited in manner aforesaid, and the rents, issues, and profits thereof had, received, and taken accordingly, without any interruption from him the said C. D., or his heirs, or by any other persons lawfully claiming by, from, or under or in trust for him or them, or by, from, or under

For title to freeholds in release to uses. (*Shorter form*).

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.
(*b*) Vide Tit. X. art. xlv. note.

any of his ancestors; and that absolutely discharged, or otherwise by the said C. D. indemnified from all conveyances, charges, and incumbrances made or suffered, or hereafter to be made or suffered by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, or by, from, or under any of his ancestors; and that he the said C. D., and all persons claiming under or in trust for him, or under any of his ancestors, shall and will, upon the request and at the expense of the said A. B., his heirs, appointees, and assigns, execute all such further assurances as may be required by him or them for releasing and conveying the premises to the uses hereinbefore limited in manner aforesaid.

For title to freeholds in appointment and release in fee. (*In purchase deeds*).

XLIX. Covenant, promise, and agree with and to the said A. B., his heirs and assigns, by these presents, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said C. D., or the said E. F. the testator (*a*), or any person claiming under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, the power or authority hereinbefore exercised was well and effectually created by the hereinbefore in part recited indenture of the —— day of ——, and is, at the time of the sealing and delivery of these presents, in full force and virtue, and in no wise suspended, extinguished, weakened, merged, or otherwise become void or voidable; and that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said C. D. and G. H. [*trustee*] now have in themselves respectively good right, full power, and lawful and absolute authority to direct, limit, and appoint, grant, bargain, sell, release, and confirm the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, with the appurtenances, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and that it shall and may be lawful to and for the said A. B., his heirs and assigns, from

That the power is good.

Hath right to appoint and convey.

For quiet enjoyment.

(*a*) Vide Tit. X. art. xlv. note.

time to time, and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and every part thereof, to and for his and their proper use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by him the said C. D., or his heirs, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by, from, or under the said E. F., the testator; And that, free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D., or his heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by the said E. F., the testator, or any person claiming under him, (save and except &c.) (*a*); And further, that he the said C. D., and his heirs, and all and every other persons or person having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said messuage, lands,

Free from incumbrances.

For further assurances.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under or in trust for him the said C. D., or his heirs, or by, from, or under the said E. F., the testator, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with and at the proper costs, charges, and expenses in the law of the said A. B., his heirs or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, and every of them, and every part thereof, with their appurtenances, unto and to the use of the said A. B., his heirs and assigns, for ever, (subject as hereinbefore is mentioned), as by the said A. B., his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required.

For title to freeholds, in appointment and release to uses. (*In purchase deeds*).

That the power is good.

L. Covenant, promise, and agree with and to the said A. B. and his heirs by these presents in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said C. D. or the said E. F. the testator (*a*), or any person claiming under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, the power or authority hereinbefore exercised was well and effectually created by the hereinbefore in part recited indenture of the —— day of ——, and is at the time of the sealing and delivery of these presents in full force and virtue, and in nowise suspended, extinguished, weakened, merged, or otherwise become void or voidable; and that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said C. D. and G. H., [*trustee*], now have in themselves re-

Right to appoint and convey.

(*a*) Vide Tit. X. art. xlv. note.

spectively good right, full power, and lawful and absolute authority to direct, limit and appoint, grant, bargain, sell, release, and confirm the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, with the appurtenances thereunto belonging, to the uses hereinbefore expressed or declared of or concerning the same in manner aforesaid, and according to the true intent and meaning of these presents; and that the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, with their appurtenances, shall and may from time to time, and at all times hereafter, go and remain to the uses hereinbefore expressed or declared of and concerning the same, and be peaceably and quietly entered into and upon, held, used, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, had, received, and taken accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever, of or by him the said C. D. or his heirs, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dower, right and title of dower, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D., or his heirs, or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust

For quiet enjoyment.

Free from incumbrances.

for him, them, or any of them, or by the said E. F. the testator, or any person claiming under him, (except &c.) (*a*);

For further assurances.

And further that he the said C. D. and his heirs, and all and every other person or persons having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under or in trust for him the said C. D., or his heirs, or by, from, or under the said E. F. the testator, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with, and at the proper costs and charges in the law of the said A. B., his heirs, appointees, or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said messuage, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, and every of them, and every part thereof, with their appurtenances, (subject as hereinbefore is mentioned), to the uses hereinbefore expressed or declared of and concerning the same, as by the said A. B., his heirs, appointees, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required.

For title to copyholds. (*In purchase deeds*).

LI. Covenant, promise, and agree with and to the said A. B., his heirs and assigns, by these presents in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said C. D., or the said E. F. the testator (*b*), or any person claiming under him, made, done, committed, or executed,

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(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

(*a*) Vide Tit. X. art. xlv. note.

or knowingly or willingly suffered to the contrary (except as appears by these presents) he the said C. D. is at the time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuage, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, and every part thereof with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance to him and his heirs, according to the custom of the said manor of A., without any manner of condition, trust, property, equity of redemption, remainder, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; and that for and notwithstanding any act, deed, matter, or thing as aforesaid, he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to surrender the said messuage, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed, and intended so to be, with the appurtenances thereunto belonging, to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and that it shall and may be lawful to and for the said A. B., his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said messuage, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their proper use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or for, by him the said C. D., or his heirs, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended,

That vendor is seised in fee according to the custom.

Hath right to surrender.

For quiet enjoyment.

Free from incumbrances.

kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, surrenders, sales, leases, mortgages, jointures, freebench, trusts, intails, wills, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, and of, from, and against all other estates, titles, troubles, charges, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D., or his heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by the said E. F. the testator, or any person or persons claiming under him (save and except, &c.) (*a*). And further, that he the said C. D. and his heirs, and all and every other person or persons having or claiming, or who shall or may have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said messuage, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for him the said C. D., or his heirs, or by, from, or under the said E. F. the testator, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with, and at the proper costs and charges in the law of the said A. B., his heirs or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely surrendering and assuring of the said messuage, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, and every of them, and every part thereof, with the appurtenances, to the use of the said A. B., his heirs and assigns (subject as hereinbefore is mentioned), as by

For further assurances.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp 705—709.

the said A. B., his heirs or assigns, or his or their counsel in the law shall be reasonably advised, or devised and required.

LII. Covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, by these presents in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said C. D., or the said E. F. the testator (*a*), or any person claiming under him, made, done, committed, or executed, or knowingly or willingly permitted or suffered to the contrary (except as appears by these presents), the hereinbefore in part recited indenture of lease is at the time of the sealing and delivery of these presents a good, valid, and effectual lease and demise in the law of and for the said messuage and other premises therein comprised; and the said term of —— years is not forfeited, merged, extinguished, weakened, surrendered, determined, or otherwise become void or voidable; and that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to assign the said messuage and other premises hereinbefore assigned, or expressed and intended so to be, with the appurtenances, unto the said A. B., his executors, administrators, and assigns, for all the residue and remainder now to come and unexpired of the said term of —— years in manner aforesaid, and according to the true intent and meaning of these premises; and that it shall and may be lawful to and for the said A. B., his executors, administrators, and assigns, from time to time, and at all times hereafter during the said term of —— years, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said messuage and other premises hereinbefore assigned, or expressed and intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their proper use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or de-

For title to leaseholds. (*In purchase deeds*).

That the lease is good.

Hath right to assign.

For quiet enjoyment.

(*a*) Vide Tit. X. art. xlv. note.

mand whatsoever of or by the said C. D., his executors or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D., his executors or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by the said E. F. the testator, or any other person or persons claiming under him (save and except, &c.) (*a*). And further, that he the said C. D., his executors and administrators, and all and every other person and persons having or claiming, or who shall or may have or claim any estate, right, title, interest, property, claim, or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said messuage and other premises hereinbefore assigned, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under or in trust for him the said C. D., his executors or administrators, or by, from, or under the said E. F. the testator, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with, and at the proper costs, charges, and expenses of the said A. B., his executors, administrators, and assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, assignments, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring the premises hereinbefore assigned, or expressed and intended so to be, unto the said A. B., his

Free from incumbrances.

For further assurance.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

executors, administrators, and assigns, for all the residue and remainder which shall be then to come and unexpired of the said term of —— years, as by the said A. B., his executors, administrators, and assigns, or his or their counsel in the law shall be reasonably advised or devised and required (*a*).

For title to freeholds and copyholds. (*In purchase deeds*).

That vendor is seised in fee of freehold.

LIII. Covenant, promise, and agree with and to the said A. B., his heirs and assigns, by these presents, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said C. D. (*b*), or any person claiming under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary (except as appears by these presents), he the said C. D. is at the time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance

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Form of proviso that covenants shall not extend to warrant titles against certain persons.

(*a*) "Provided always, and it is hereby declared and agreed by and between the parties to these presents, as far as they respectively are interested, that none of the covenants hereinbefore contained on the part of the said A. B., his heirs, executors, or administrators, shall extend or be construed to extend to warrant the title to the said messuages &c., or any of them, against the acts, deeds, defaults, or incumbrances of the said C. D., or of the said E. F. respectively, or of any person or persons who for the time being, and from time to time was or were the owner or owners of the premises respectively, or any of them, subsequent to the leases granted to them respectively, and prior to the assignment made to the said A. B. as aforesaid, and the acts, deeds, defaults, and incumbrances of the same lessees respectively, and of such intermediate owners as are excepted out of the said covenants."

(*b*) Vide Tit. X. art. xlv. note.

And is seised of copyhold to him and his heirs, according to the custom.

in fee-simple; and that for and notwithstanding any such act, deed, matter, or thing whatsoever as aforesaid (except as appears by these presents), he the said C. D. is at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of or well and sufficiently entitled to the said copyhold pieces or parcels of land and other hereditaments hereinbefore convenanted to be surrendered, or expressed and intended so to be, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance, to him and his heirs, according to the custom of the said manor of A., without any manner of condition, use, trust, property, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; and that for and notwithstanding any act, deed, matter, or thing as aforesaid (except as hereinbefore is mentioned), he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with the appurtenances thereunto belonging, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also to surrender the said copyhold pieces or parcels of land and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, with the appurtenances thereunto belonging, to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also that it shall and may be lawful to and for the said A. B., his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said freehold and copyhold hereditaments hereinbefore granted and released, and covenanted to be surrendered respectively, or expressed and intended so to be, and every of them and every part thereof respectively, to and for his and their proper use and benefit respectively, according to the nature of

Hath right to convey freeholds, and surrender copyholds.

For quiet enjoyment.

the same premises respectively, and the true intent and meaning of these presents, without the lawful let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of or by him the said C. D., his heirs, executors, or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, assignments, jointures, dower, right and title of dower, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered by the said C. D., his heirs, executors, or administrators, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by the said E. F. the testator, or any person or persons claiming under him (other than and except, &c.) (*a*). And further, that he the said C. D., and his heirs, and all and every other persons and person having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said freehold and copyhold messuages, lands, and other hereditaments hereinbefore granted and released and covenanted to be surrendered respectively, or expressed and intended so to be, with their appurtenances, or any of them, or any part thereof respectively, by, from, under, or in trust for him the said C. D., his heirs, executors,

Free from incumbrances.

For further assurance.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

or administrators, or by, from, or under the said E. F. the testator, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with, and at the proper costs, charges, and expenses in the law of the said A. B., his heirs, executors, administrators, and assigns respectively, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, devices, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring of the said freehold messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns, and for surrendering and assuring the said copyhold pieces or parcels of land and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, and every of them, and every part thereof respectively, with their and every of their appurtenances, to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said A. B., his heirs or assigns, or his, their, or any of their counsel in the law shall be reasonably advised or devised and required.

For title to freeholds and leaseholds. (*In purchase deeds*).

That vendor is seised in fee of freeholds.

LIV. Covenant, promise, and agree with and to the said A. B., his heirs, executors, administrators, or assigns, by these presents, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said C. D. (*a*), or any person claiming under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, (except as appears by these presents), he the said C. D. is at the time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuage, lands, and other hereditaments

(*a*) Vide Tit. X. art. xlv. note.

hereinbefore granted and released, or expressed and intended so to be, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance in fee-simple, without any manner of condition, use, trust, property, power of revocation, equity of redemption, remainder or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; and that for and notwithstanding any act, deed, matter, or thing as aforesaid, (except as appears by these presents), the hereinbefore in part recited indenture of lease is, at the time of the sealing and delivery of these presents, a good, valid, and effectual lease and demise in the law of and for the said messuage and other premises therein comprised, and the said term of —— years is not forfeited, merged, extinguished, weakened, surrendered, or otherwise become void or voidable; and that for and notwithstanding any act, deed, matter, or thing as aforesaid (except as hereinbefore is mentioned), he the said C. D. hath now in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with the appurtenances thereunto belonging, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also to assign the said leasehold messuage and other premises hereinbefore assigned, or expressed and intended so to be, with the appurtenances thereunto belonging, unto the said A. B., his executors, administrators, and assigns, for and during all the residue and remainder now to come and unexpired of the said term of —— years, in manner aforesaid, and according to the true intent and meaning of these presents; and also that it shall and may be lawful to and for the said A. B., his heirs, executors, administrators, and assigns respectively, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said freehold and leasehold hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be,

And that the lease is valid.

Hath good right to convey freeholds, and to assign leaseholds.

For quiet enjoyment.

and every of them, and every part thereof respectively, to and for his and their proper use and benefit respectively, according to the nature of the same premises respectively, and the true intent and meaning of these presents, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of or by him the said C. D., his heirs, executors, or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, assignments, jointures, dowers, right and title of dower, free-bench, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D., his heirs, executors, or administrators, or by any person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them, or by the said E. F. the testator, or any person or persons claiming under him (other than and except &c.) (*a*); and further that he the said C. D., his heirs, executors, and administrators, and all and every other persons and person having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said freehold and leasehold messuages,

Free from incumbrances.

Further assurance.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

lands, and other hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, with their appurtenances, or any of them, or any part thereof respectively, by, from, or under or in trust for him the said C. D., his heirs, executors, or administrators, or by, from, or under the said E. F. the testator, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with and at the proper costs, charges, and expenses in the law of the said A. B., his heirs, executors, administrators, and assigns respectively, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, devices, conveyances, assignments, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring of the said freehold messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns, and for assigning and assuring the said leasehold messuage and premises hereinbefore assigned, or expressed and intended so to be, with their appurtenances, unto the said A. B., his executors, administrators, and assigns, for all the residue and remainder which shall be then to come and unexpired of the said term of —— years, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said A. B., his heirs, executors, administrators, or assigns respectively, or his, their, or any of their counsel in the law shall be reasonably advised or devised and required.

For title to freeholds, copyholds, and leaseholds. (*In purchase deeds*).

LV. Covenant, promise, and agree with and to the said A. B., his heirs, executors, administrators, and assigns, by these presents, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said C. D. (*a*), or any person claim-

(*a*) Vide Tit. X. art. xlv. note.

That vendor is seised in fee of freeholds.

ing under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, (except as appears by these presents), he the said C. D. is at the time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible

And is seised of copyholds to him and his heirs, according to the custom.

estate of inheritance in fee-simple; and that for and notwithstanding any such act, deed, matter or thing whatsoever as aforesaid, (except as appears by these presents), he the said C. D. is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of, or well and sufficiently entitled to the said copyhold pieces or parcels of land and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance, to him and his heirs, according to the custom of the said manor of A., without any manner of condition, use, trust, property, power of revocation, equity of redemption, remainder or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same;

And that the lease is valid.

and that for and notwithstanding any such act, deed, matter or thing as aforesaid, (except as appears by these presents), the hereinbefore in part recited indenture of lease is at the time of the sealing and delivery of these presents a good, valid, and effectual lease and demise in the law of and for the said messuage and other premises therein comprised; and the said term of —— years is not forfeited, merged, extinguished, weakened, surrendered, determined, or otherwise become void or voidable; and that for and notwithstanding

Hath good right to convey freeholds, to surrender copyholds, and to assign leaseholds.

any such act, deed, matter, or thing as aforesaid, (except as hereinbefore is mentioned), he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with the

appurtenants thereunto belonging, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also to surrender the said copyhold pieces or parcels of land, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, with the appurtenances thereunto belonging, to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also to assign the said leasehold messuage and other premises hereinbefore assigned, or expressed and intended so to be, with the appurtenances thereunto belonging, unto the said A. B., his executors, administrators, and assigns, for and during all the residue and remainder now to come and unexpired of the said term of —— years, in manner aforesaid, and according to the true intent and meaning of these presents; and also that it shall and may be lawful to and for the said A. B., his heirs, executors, administrators, or assigns respectively, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said freehold, copyhold, and leasehold hereditaments and premises hereinbefore granted and released, covenanted to be surrendered, and assigned respectively, or expressed and intended so to be, and every of them, and every part thereof, to and for his and their proper use and benefit respectively, according to the nature of the same premises respectively, and the true intent and meaning of these presents, without the lawful let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever, of or by him the said C. D., his heirs, executors, or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by, from, or under the said E. F. the testator; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, assignments, jointures, dowers, right

For quiet enjoyment.

Free from incumbrances.

and title of dower, free-bench, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. D., his heirs, executors, or administrators, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by the said E. F. the testator, or any person or persons claiming under him, (other than and except &c.) (*a*); And further that he the said C. D., his heirs, executors, and administrators, and all and every other persons and person having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said freehold, copyhold, and leasehold messuages, lands, and other hereditaments and premises hereinbefore granted and released, covenanted to be surrendered, and assigned respectively, or expressed and intended so to be, with their appurtenances or any of them, or any part thereof respectively, by, from, or under or in trust for him the said C. D., his heirs, executors, or administrators, or by, from, or under the said E. F. the testator, shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose, by and with and at the proper costs, charges, and expenses in the law of the said A. B., his heirs, executors, administrators, and assigns respectively, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, devices, conveyances, surrenders, assignments, and assurances in the law whatsoever, for the further,

For further assurance.

(*a*) For Forms of exceptions, vide Tit. X. art. xlv. note, pp. 705—709.

better, more perfectly, and absolutely granting, conveying, and assuring of the said freehold messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns; and for surrendering and assuring the said copyhold pieces or parcels of land, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, and every of them, and every part thereof respectively, with their and every of their appurtenances, to the use of the said A. B., his heirs and assigns; and for assigning and assuring the said leasehold messuage and premises hereinbefore assigned, or expressed and intended so to be, with their appurtenances, unto the said A. B., his executors, administrators, and assigns, for all the residue and remainder which shall be then to come and unexpired of the said term of —— years, in manner aforesaid and according to the true intent and meaning of these presents, as by the said A. B., his heirs, executors, administrators, and assigns respectively, or his, their, or any of their counsel in the law, shall be reasonably advised or devised and required.

For title to a reversionary interest in a sum of money.

That vendor has not disposed thereof.

LVI. Covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said C. D. hath not, at any time heretofore, bargained, sold, assigned, transferred, or disposed of, or agreed to bargain, sell, assign, transfer, or dispose of the right, title, or interest, which he, by virtue of the hereinbefore in part recited indenture of the —— day of —— (*a*), or otherwise, had, or was, or is entitled to, immediately expectant on the decease of the said E. F., of, in, or to the said sum of £——, or any part thereof; And that he the said C. D. is now well and sufficiently entitled to the said sum of £——, expectant on the decease of the said E. F., and hath in himself good right,

That he is entitled thereto, and has right to assign.

(*a*) Or,—
"will of the said G. H., deceased," or otherwise, as the case may be.

full power, and lawful and absolute authority to assign and assure the same unto the said A. B., his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; And further, that he the said C. D., his executors and administrators, shall and will, upon the request and at the proper costs and charges of the said A. B., his executors, administrators, and assigns, at any time or times hereafter, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, assignments, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely assigning, assuring, and confirming the said sum of £——, and every part thereof, after the decease of the said E. F., unto him the said A. B., his executors, administrators, and assigns, and for procuring the same to be paid to him or them, for his or their proper use and benefit, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said A. B., his executors, administrators, and assigns, or his or their counsel in the law, shall be reasonably advised or devised and required.

For further assurance.

For title to an annuity or rent-charge. (*In assignment*). That annuity is subsisting.

LVII. Covenant and agree with the said A. B., his executors, administrators, and assigns, that notwithstanding any act, deed, matter, or thing whatsoever had, made, done, committed, permitted, or suffered to the contrary, by the said C. D., the said (*a*) annuity or rent-charge of £——, hereby assigned, or intended so to be, is (*b*) a good, valid, and subsisting annuity, [and hath not been repurchased]; and that (*c*)

(*a*) Or,—

"two several annuities of £—— and £——."

(*b*) Or,—

"now at the time of executing these presents."

(*c*) Or,—

"the same annuities respectively, and also the said recited securities for the same respectively, are still in force [and that the same annuities or either of them have not nor hath been repurchased]; and that the same securities, or any of them, have not nor hath been released, vacated, avoided, or determined."

notwithstanding any such act, deed, matter, or thing as aforesaid, the same annuity or yearly rent-charge is not released, extinguished, or determined; And that notwithstanding any such act, deed, matter, or thing as aforesaid, he the said C. D. now hath in himself good right, full power, and lawful and absolute authority, by these presents, to grant or assign or otherwise assure the said annuity or yearly rent-charge of £—— (*a*), and the said bond, warrant of attorney, judgment, covenant, and instrument or policy of insurance respectively hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, unto the said A. B., his executors, administrators, and assigns, according to the true intent and meaning of these presents; And further, that henceforth, and from time to time and at all times hereafter, during the life of the said E. F., [or till the said annuity or rent-charge of £—— shall be repurchased], it shall or may be lawful to and for the said A. B., his executors, administrators, and assigns, to receive, and take the said annuity or yearly rent-charge of £——, and the benefit thereof and of the said securities for the same, and also the benefit of the said instrument or policy of insurance, in manner and form aforesaid, according to the true intent and meaning of these presents (*b*), without any let, suit, or interruption whatsoever of, from, or by the said C. D., his executors or administrators, or any person or persons rightfully claiming or to claim by, from, under, or in trust for him or them; And free and clear, freely, clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise, by him the said C. D., his heirs, executors, or administrators, at his or their own costs and charges, in all things well and sufficiently protected, defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, assignments, releases, estates,

Power to assign.

Quiet possession.

Free from incumbrances.

(*a*) Or,—

"and the said recited securities for the same."

(*b*) Or,—

"until the same annuity shall be repurchased."

titles, troubles, liens, charges, and incumbrances whatsoever, at any time or times heretofore, and to be at any time and from time to time hereafter made, done, committed, occasioned, or suffered by the said C. D., his executors or administrators, or any person or persons rightfully claiming or to claim by, from, under, or in trust for him or them; And lastly, that he the said C. D., his executors and administrators, and all persons rightfully claiming or to claim by, from, under, or in trust for him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said A. B., his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, powers, authorities, and other assurances whatsoever, for further, better, and more effectually or satisfactorily assigning or otherwise assuring unto, or vesting in the said A. B., his executors, administrators, and assigns, the said annuity or yearly rent-charge of £—— (*a*), bond, warrant of attorney, judgment, covenant, and policy of insurance, and other premises hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, unto the said A. B., his executors, administrators, and assigns; and also for authorizing and empowering him and them to receive, obtain payment, and derive the full benefit of the said annuity or yearly rent-charge (*b*), bond, warrant of attorney, judgment, covenant, and policy of insurance, according to the true intent and meaning of these presents, as by the said A. B., his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required (*c*).

Further assurances.

(*a*) Or,—

"and the benefit of the securities for the same annuity."

(*b*) Or,—

"and the securities for the same."

(*c*) The following clause is sometimes added,—

"So as such further assurances, or any of them, shall not

LVIII. Covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that the several principal and other sums of money, interest, and property hereby assigned, or intended so to be, and every of them, and every part thereof, are now due and owing to the said A. B., and are free from all incumbrances made, done, or committed by him the said A. B.; And also, that he the said A. B. now hath in himself full power, and lawful and absolute authority, to bargain, sell, assign, transfer, and set over the same principal and other sums of money, interest, and property respectively hereby assigned, or intended so to be, and every part and parcel of the same, unto the said C. D., his executors, administrators, and assigns, upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents; And that it shall or may be lawful to and for the said C. D., his executors, administrators, and assigns, to have, hold, receive, take, and enjoy the said principal and other monies, interest, and property hereby assigned, or intended so to be, and every part and parcel of the same, without any let, suit, interruption, or denial of him the said A. B., his executors or administrators, or any person or persons rightfully claiming by, from, under, or in trust for him or them; And further, that he the said A. B., his heirs, executors, or administrators, shall not nor will, at any time or times hereafter, without the consent in writing of the said C. D., his executors or administrators, or

For title to choses en action. (*In assignment*).

That money is owing.

Power to assign.

Peaceable enjoyment.

Not to release.

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contain in them, or imply any further or other covenants or warranty on the part of the person or persons who shall be requested to make and execute the same, than for himself, herself, and themselves respectively, and the acts, deeds, and defaults of himself, herself, and themselves respectively, and his, her, and their respective executors and administrators, and so as the person or persons who shall be requested to do such acts or make such further assurance shall not be compelled or compellable, for the purpose of making or doing the same, to go or travel from his, her, or their then dwelling or place of abode, or respective dwellings or places of abode."

the order, judgment, or decree of some court of law or equity, for that purpose first had and obtained, receive, release, acquit, or discharge all or any part of the principal and other monies, interest, and property hereby assigned, or intended so to be, nor without such consent, order, judgment, or decree, revoke or countermand all or any of the powers and authorities hereinbefore contained and given to the said C. D., his executors, administrators, or assigns (*a*).

For title in grant of annuity.

To pay annuity.

LIX. Covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said C. D., his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said A. B., his executors, administrators, or assigns, during the said term of —— years, determinable as aforesaid, the said annuity, yearly rent, or sum of £——, and also such proportionate part thereof as aforesaid, as and when the same respectively shall become due and payable, without any deduction whatsoever, (except as hereinbefore is mentioned), and according to the true intent and meaning of these presents; And also that he the said C. D. hath in himself good right, full power, and lawful and absolute authority to grant and confirm the said annuity, yearly rent, or sum of £——, and the aforesaid powers and remedies for recovering and compelling payment thereof, and to charge the same upon all and singular the messuage, lands, and other hereditaments hereinbefore mentioned, in manner aforesaid, and according to the true intent and meaning of these presents; and that all and singular the said messuage, lands, and hereditaments shall, during the said term of —— years, determinable as aforesaid, remain, continue, and be charged with and subject to the said annuity, yearly rent, or sum of £——, and subject and liable to the distress and distresses, entry and entries of the said A. B., his executors, administrators, and assigns, for the recovery of the same, and for all costs, and charges, and expenses to be occasioned by the nonpay-

Hath good right to grant and charge.

(*a*) Add a covenant for further assurance, as in last Form.

ment thereof; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, and discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless and indemnified of, from, and against all charges and incumbrances whatsoever; and further, that he the said C. D., and all and every the persons and person whomsoever having or claiming, or who shall or may at any time or times hereafter have or claim any estate, right, title, or interest, at law or in equity, of, in, to, or out of the said messuage, lands, and other hereditaments hereinbefore charged, shall and will, at any time or times hereafter, upon every reasonable request of the said A. B., his executors, administrators, or assigns, but at the proper costs and charges of the said A. B., make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, and assurances whatsoever, for the further, better, and more effectually charging the said messuage, lands, and other hereditaments with the said annuity, yearly rent, or sum of £——, and of the aforesaid powers and remedies for recovering and enforcing payment thereof, as by the said A. B., his executors, administrators, and assigns, or his or their counsel in the law, shall be reasonably advised, or devised and required.

Free from incumbrances.

For further assurances.

LX. Covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said C. D. hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, and demise the said messuage, lands, and other hereditaments unto the said A. B., his executor, administrators, and assigns, for and during the said term of —— years, determinable as aforesaid, in manner aforesaid, and according to the true intent and meaning of these presents; and that all and singular the said messuage, lands, and other hereditaments shall and may be held, possessed, occupied, and enjoyed by the said A. B., his executors, administrators, and assigns, for the said term of —— years, determinable as aforesaid, upon the

For title. (*In demises for securing annuity*).

trusts and in manner hereinbefore mentioned, and according to the true intent and meaning of these presents; and that free and clear, and freely and clearly and absolutely exonerated, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all charges and incumbrances whatsoever; and further, that he the said C. D., and all and every the persons and person whomsoever, having or claiming, or who shall or may at any time or times hereafter have or claim, any estate, right, title, or interest, at law or in equity, of, in, to, or out of the said messuage, lands, and other hereditaments hereinbefore charged and bargained, sold, and demised as aforesaid, shall and will at any time or times hereafter, upon every reasonable request of the said A. B., his executors, administrators, or assigns, but at the proper costs and charges of the said C. D., make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, things, and assurances whatsoever, for the further and better, and more effectually bargaining, selling, demising, assuring, and confirming the said messuage, lands, and other hereditaments unto the said A. B., his executors, administrators, and assigns, for the residue which shall be then to come and unexpired of the said term of —— years, determinable as aforesaid, upon the trusts and in manner hereinbefore mentioned, and according to the true intent and meaning of these presents, as by the said A. B., his executors, administrators, or assigns, or the said E. F., his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised, or devised and required.

For title to freeholds in release in fee. (*In mortgages*).

LXI. Covenant, promise, and agree with and to the said A. B., his heirs and assigns, by these presents in manner following; (that is to say), that (*a*) he the said C. D. is at the

(*a*) The student will observe, that covenants for title in mortgages are not restricted to the acts of certain persons, as in purchases, but are general and unlimited.

time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, of a good, sure, lawful, perfect, absolute, and indefeasible estate of inheritance in fee-simple, without any condition, use, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same (except, &c.). And that he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, unto the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also that if default shall be made in payment of the said sum of £—— or any part thereof, contrary to the aforesaid proviso or agreement, and the covenant hereinbefore contained for payment thereof, and the true intent and meaning of these presents; then and in such case it shall be lawful for the said A. B., his heirs or assigns, at any time or times thereafter, and from time to time, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part thereof, with their appurtenances, and to receive and take the rents, issues, and profits thereof, to and for his and their proper use and benefit, without the lawful let, suit, trouble, interruption, claim, or demand whatsoever of or by him the said C. D., his heirs or assigns, or any other person or persons lawfully or equitably claiming or to claim any estate, right, title, interest, or inheritance into or out of the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them or any part thereof; and that free and clear, and

That mortgagor is seised in fee.

Hath right to convey.

For quiet enjoyment by mortgagee on default of payment.

freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged or otherwise by the said C. D., his heirs, executors, or administrators, saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, jointures, dowers, uses, trusts, entails, wills, statutes, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever (save and except as hereinbefore is mentioned); and further, that if default shall be made of or in payment of the aforesaid sum of £——, or any part thereof, contrary to the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, then and in such case he the said C. D., and his heirs, and all and every other person and persons whomsoever having or claiming, or who shall or may have or claim, any estate, right, title, or interest, claim or demand whatsoever either at law or in equity, of, in, or to the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any of them or any part thereof, shall and will from time to time and at all times thereafter, upon the request of the said A. B., his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, unto and to the use of the said A. B., his heirs and assigns, as by the said A. B., his heirs or assigns, or his or their counsel in the law shall be reasonably advised or devised and required. Provided also, and it is hereby agreed and declared between and by the said A. B. and C. D., and the true intent and meaning of them and of these presents nevertheless further is,

that it shall be lawful for the said C. D. (*a*), his heirs and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy the said messuage, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof to and for his and their proper use and benefit, until default (*b*) shall be made in payment (*c*) of the said sum of £—— and interest, or any part thereof respectively, contrary to the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, without any let, suit, trouble, denial, interruption, or disturbance whatsoever, of, from, or by the said A. B., his heirs or assigns, or by any other person or persons whomsoever lawfully claiming or to claim by, from, or under him, them, or any of them (*d*).

Proviso for enjoyment by mortgagor until default.

(*a*) Or,—

"the said C. D. during his life; and after his death, to and for the person or persons who for the time being would have been entitled to the possession or to the receipt of the rents of the said manor &c. under the uses declared thereof by the said recited indenture of &c. in case these presents had not been made or executed."

(*b*) Or, where there is a power of sale, and a previous notice is to be given,—

"the expiration of —— calendar months after the expiration of such notice as aforesaid, and in default in payment of the money which at the end of that time shall be due on this present security."

(*c*) Or,—

"in the transfer of the said sum of £—— Bank Annuities, or in payment of the sum or sums in lieu of the interest, dividends, and annual produce thereof, or any part thereof respectively."

(*d*) In an able note to *Doe* d. *Roby* v. *Maisey*, 3 Man. & Ryl. 109, Mr. Manning has suggested that the effect of this proviso for enjoyment until default, is not to vest in the mortgagor a chattel interest or term, but rather a determinable fee, as in the ordinary case of a limitation in a

For title to freeholds and copyholds; with a covenant to join in sales and conveyances to purchasers. (*In mortgages, upon trusts for sale*).

LXII. Covenant and agree with and to the said A. B, his heirs and assigns, by these presents in manner following; (that is to say), that he the said C. D. is, at the time of the sealing and delivery of these presents, lawfully, rightfully,

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marriage settlement to the settlor, his heirs and assigns, until the marriage. To this, however, it has been objected that such a construction would be repugnant to the use already limited to the mortgagee; and the more general opinion seems to be, that the provision in question confers upon the mortgagor an interest in the nature of a term of years. Coote on Mortgages, p. 392; Smith's Leading Cases, i. 296; Watkins' Conveyancing, p. 13, fifth edition,—a work, by the way, of much greater reputation than merit, but singularly distinguished by the abilities of its successive editors. If the mortgagor himself be in the actual occupation of the land, then it will be desirable, in order to give the mortgagee a power of enforcing the payment of his interest by means of a distress for rent, to make the mortgagor tenant at will at a fixed yearly rent. Vide *Rogers* v. *Humphreys*, 5 Nev. & Man. 511, 521. With this view, the following Form may be adopted. It applies, indeed, to the case of a mortgagor being in the occupation of part only of the mortgaged premises, but may be easily varied according to circumstances:—

"And whereas part of the said manor, messuages, &c. hereby released or otherwise assured, or intended so to be, is in the occupation of the said A. B., and it has been agreed that he shall become actual tenant at will of the same to the said C. D. and E. F., and the survivor of them, at the yearly rent of £——, to the intent that there may be a remedy by distress for recovering the said rent of £——. Now this indenture witnesseth that the said C. D. and E. F. do hereby demise, lease, and to farm let, to the said A. B. such and so many, and such parts of the said manor, messuages, &c. hereby released or otherwise assured, or intended so to be, as are now in the occupation of the said A. B.; to hold the same to the said A. B. at the will of the said C D. and E. F., and the will of the survivor of them; yielding and paying therefor to the said C. D. and E. F., and the survivor of them, yearly and every year during the continuance of the said lease, the rent of £——, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, clear of all deductions for land-tax, or on any other account whatsoever."

and absolutely seised of or well and sufficiently entitled to a good, sure, sole, perfect, absolute, and indefeasible estate of inheritance in fee-simple of and in the said messuages, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, and every part thereof, with their appurtenances; and is also at the time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised of or well and sufficiently entitled to the said messuages, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, and every part thereof, with their appurtenances, of a good, sure, sole, lawful, perfect, absolute, and indefeasible estate of inheritance to him and his heirs, according to the custom of the said manor of A., without any condition, trust, power of revocation or limitation, or any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; And that he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said messuages, lands, and other hereditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and also to surrender the said copyhold messuages, lands, and other hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, with the appurtenances thereunto belonging, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and further that it shall and may be lawful to and for the said A. B., his heirs and assigns, in the meantime, after the said messuages, lands, and other hereditaments hereinbefore granted and released, and covenanted to be surrendered, or expressed and intended so to be, shall become saleable, until the same shall be sold, and from and after such sale or sales shall be made and perfected as aforesaid, to and for the purchaser or purchasers of the same several hereditaments, and his, her, and their respective heirs and assigns, peaceably and quietly to have,

For quiet enjoyment.

hold, occupy, possess, and enjoy the said messuages, lands, and other hereditaments hereinbefore mentioned, and intended to be hereby granted and released, and covenanted to be surrendered, with their and every of their appurtenances, and to receive and take the rents, issues, and profits thereof unto him the said A. B., his heirs and assigns, upon the trusts aforesaid, and unto the several purchaser or purchasers, his, her, and their heirs and assigns, to and for his, her, and their own use and benefit, without any lawful let, suit, trouble, denial, eviction, interruption, or disturbance whatsoever, of, from, or by the said C. D., his heirs and assigns, or any person or persons whomsoever, having or lawfully or equitably claiming or to claim, or who shall or may have or lawfully or equitably claim any estate, right, title, or interest of and in the said messuages, lands, and other hereditaments hereinbefore granted and released, and covenanted to be surrendered, or expressed and intended so to be, or any of them, or any part or parts thereof; and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged or otherwise by the said C. D., his heirs, executors, or administrators, saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, mortgages, uses, trusts, wills, entails, annuities, rent-charges, rents-seck, and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, extents, seizures, sequestrations, and all other estates, titles, troubles, charges, and incumbrances; and moreover that he the said C. D. and his heirs, and all and every other person or persons whomsoever, having, or lawfully or equitably claiming or to claim, any estate, right, title, or interest of and in the said messuages, lands, and other hereditaments hereinbefore granted and released, and covenanted to be surrendered, or expressed and intended so to be, or any of them, or any part thereof, shall and will from time to time, and at all times hereafter, upon the request of the said A. B., his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said C. D., his heirs, executors, administrators, or assigns, until a sale or sales shall be made of the said messuages, lands, and other

Free from incumbrances.

For further assurances.

hereditaments hereinbefore mentioned, and intended to be hereby granted and released, and covenanted to be surrendered, and from and after such sale or sales, at the request, costs, and charges of the purchaser or purchasers of the same hereditaments and premises, his, her, or their heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, and things, devices, conveyances, and assurances in the law, for the further, better, more perfectly, and absolutely granting, conveying, assuring, and surrendering the said messuages, lands, and other hereditaments hereinbefore granted and released, and covenanted to be surrendered, or expressed and intended so to be, with their appurtenances, unto and to the use of the said A. B., his heirs and assigns, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, until such sale or sales as aforesaid; and from and after such sale or sales, unto and to the use of the purchaser or purchasers of the same hereditaments and premises, his, her, and their heirs and assigns, as by the person or persons requiring any such further assurance or assurances to be made, his, her, their, or any of their counsel in the law, shall be reasonably advised or devised and required (*a*); And moreover that he the said C. D., his heirs, executors, administrators, and assigns, shall and will join and concur in the making of any sale to be made, or proposed to be made, by the said A. B., his heirs or assigns, under or by virtue of the trusts hereinbefore contained, and in executing the several conveyances and assurances of the said messuages, lands, and other hereditaments to the purchaser or purchasers thereof, or of any of them, and enter into all usual and reasonable covenants with such purchaser or purchasers, his, her, and their heirs and assigns, for the estate, title, possession, and further assurance of the said premises, or such of them as shall be sold, or do any other reasonable act or acts for confirming such sale or sales; nevertheless it is hereby agreed and de-

To join in sales and conveyances to purchasers.

(*a*) Here insert the usual proviso enabling the mortgagor to hold the premises and receive the rents, &c., until default. Vide Form in art. lxi.

clared, that the joining of the said C. D., his heirs, executors, administrators, or assigns, in any such sale or sales, conveyance or conveyances as aforesaid, shall not in any wise be deemed or considered as essential or necessary to perfect the title of the purchaser or purchasers of the said hereditaments and premises, or any part thereof, the same being intended only for the further satisfaction of such purchaser or purchasers (*a*).

For title to freehold estate (*In settlements*). That settlor has right to convey (*b*).

LXIII. Covenant, promise, and agree with and to the said A. B. and C. B., their heirs and assigns, by these presents, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said C. D. or the said E. F., or any person claiming under him, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, he the said C. D. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm, settle and assure the manors, lands, tenements, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, with the appurtenances thereunto belonging, to the uses, upon the trusts, to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore limited, expressed, or declared of or con-

(*a*) This covenant owes its introduction to the doubts which at one time were entertained of the validity of a conveyance under the power or trusts for sale without the concurrence of the mortgagor,—doubts which were supposed to be countenanced by the case of *Croft* v. *Powell*, Comyn's Rep. 603. These doubts, however, are now no longer entertained, and the covenant in question may be dispensed with. *Clay* v. *Sharpe*, 18 Ves. 344; App. xv. to Sugd. Vend. & Pur.; *Corder* v. *Morgan*, 18 Ves. 344. These cases have clearly established that a purchaser cannot object to the conveyance on the ground that the mortgagor does not concur, even if he covenanted with the mortgagee to join in the sale and conveyance; such a covenant being only personal to the mortgagee,—a mere contract between the parties.

(*b*) Some practitioners introduce also a covenant for seisin (vide Form in art. xlv.); but where brevity is an object, it may be dispensed with; and indeed a covenant for further assurance is often alone inserted. Vide Form in art. lxv.

cerning the same respectively in manner aforesaid, and according to the true intent and meaning of these presents; and that all and singular the said manors, lands, tenements, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, with their appurtenances, shall and may from time to time, and at all times after the solemnization of the said intended marriage, go and remain to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore limited, expressed, or declared of or concerning the same; and shall and may be peaceably and quietly entered into and upon, and be held, used, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, had, received, and taken accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of or by him the said C. D., or his heirs, or any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them, or by, from, or under the said E. F. (except as hereinbefore is mentioned); and that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. D., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, jointures, dowers, right and title of dower, uses, trusts, entails, wills, reversions or remainders in the Crown (*a*), statutes merchant or of the staple, recognizances, judgments, extents, elegits, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the Queen's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made,

That settled estates shall go to the uses declared thereof.

For quiet enjoyment.

Free from incumbrances.

(*a*) Vide Vol. 1, Book 1, Chap. 11, art. xlii.

executed, occasioned, or suffered by the said C. D. or his heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them, or by the said E. F., or any person claiming by, from, or under him, (other than such leases thereof, or of any part thereof as are now subsisting, and also other than and except &c.) (*a*); and further that he the said C. D., and his heirs, and all and every other persons and person having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, from, or out of the said manors, messuages, lands, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him the said C. D. or his heirs, or by, from, or under the said E. F., (other than and except any person or persons claiming or to claim under or by virtue of the lease or leases or other incumbrances hereinbefore excepted), shall and will from time to time, and at all times after the solemnization of the said intended marriage, at the request of the said A. B. and C. B., or the survivor of them, or the heirs or assigns of such survivor, or any other person or persons interested in the premises, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely conveying, limiting, and assuring of the said manors, messuages, lands, and other hereditaments hereinbefore granted, released, and confirmed, or expressed and intended so to be, and every of them, and every part thereof, with their appurtenances, to the uses, upon the trusts, to and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore limited, expressed, declared, and contained of or concerning the same in manner

For further assurances.

(*a*) Vide Tit. X. art. xlv. note, pp. 705—709, for Forms of exceptions.

aforesaid, and according to the true intent and meaning of these presents, and for otherwise corroborating and confirming these presents, and every clause, matter, and thing herein contained, as by the said A. B. and C. B., or the survivor of them, or the heirs of such survivor, or any other person or persons interested in the premises, or their, his, or any of their counsel in the law shall be reasonably advised or devised and required.

For title to freeholds and copyholds. (*Short form in settlements*).

LXIV. Covenant, promise, and agree with and to the said A. B. and C. D., their heirs and assigns, by these presents, in manner following; (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said E. F., or any persons claiming under him, made, done, committed, or executed, the freehold hereditaments hereinbefore released, and the copyhold hereditaments hereinbefore covenanted to be surrendered as aforesaid, are and shall by these presents, and the surrender so covenanted to be made as aforesaid, be well and effectually vested in them the said A. B. and C. D. for an estate of inheritance to them and their heirs, according to the nature and quality thereof respectively, (subject nevertheless to the estate for life of the said G. H. therein); and the said freehold and copyhold hereditaments shall (subject as aforesaid) be by the said A. B. and C. D., their heirs and assigns, quietly held and enjoyed according to the nature and quality thereof respectively, upon the trusts hereinbefore declared of and concerning the same; and that free and clear of all adverse estates, rights, and titles, and all charges and incumbrances whatsoever made or executed by the said E. F. or any person claiming under him; and that he the said E. F., and his heirs, and all persons claiming or to claim any estate in the premises by, from, under, or in trust for him or them, shall and will upon every reasonable request of the said A. B. and C. D., their heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other acts, deeds, matters, things, conveyances, surrenders, and assurances in the law whatsoever, for the further and better assuring and conveying the said freehold and copyhold hereditaments, according to the na-

ture and quality thereof respectively, unto the said A. B. and C. D., their heirs and assigns, (subject nevertheless as aforesaid), upon the trusts hereinbefore declared of and concerning the same premises respectively as by the said A. B. and C. D., their heirs or assigns, or their counsel in the law, shall be reasonably advised or devised and required.

For further assurance. (*In settlements*).

LXV. Covenant, promise, and agree with and to the said A. B. and C. D., their executors, administrators, and assigns, by these presents, that he the said E. F., his heirs, executors, and administrators, shall and will from time to time, and at all times hereafter, at the request of the said A. B. and C. D., or the survivor of them, or the executors, administrators, or assigns of such survivor, or of any person or persons interested in the premises, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, things, and assurances, for establishing, corroborating, and confirming these presents, and every clause, matter, and thing herein contained; and for better enabling the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, to perform and execute all the trusts hereby in them reposed, as by the said A. B. and C. D., and the survivor of them, and the executors, administrators, and assigns of such survivor, or any person or persons interested in the premises, or their or any of their counsel in the law, shall be reasonably advised or devised and required.

Against incumbrances.

LXVI. Covenant and declare with and to the said A. B. and his heirs by these presents, that he the said C. D. hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the messuage and other hereditaments hereinbefore granted and released (*a*), or expressed and intended so to be, or any of

(*a*) Or,—
"assigned," "covenanted to be surrendered."

them, or any part thereof, are, is, can, shall, or may be impeached, charged, or incumbered, in title, estate, or otherwise howsoever.

Against acts preventing assignments, &c.

LXVII. Covenant and declare with and to the said A. B., his executors, administrators, and assigns, by these presents, that he the said C. D. hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, he is in any wise prevented or hindered from releasing and assigning the premises hereinbefore released and assigned, or expressed and intended so to be, unto the said A. B., his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.

To surrender copyholds; with variations. (*In purchase deeds*).

LXVIII. Covenant, promise, and agree with and to the said C. D., his heirs and assigns, that he the said A. B., or his heirs, and all other necessary parties, shall and will, on the request, and at the costs and charges, of the said C. D. [*purchaser*] (*a*), his heirs or assigns, at or before the next court to be holden for the manor of A., in the county of B., either in person or by attorney (*b*), surrender into the hands

(*a*) This provision is not absolutely necessary; as, even in the absence of such a covenant, the purchaser must bear the expense both of the surrender and of his admittance. When it is the intention of the parties that the vendor, and not the purchaser, shall sustain the expense of surrender and admittance, care must be taken, in framing the covenant, to stipulate also for the payment of the fine consequent on admittance; for a mere covenant by the vendor to surrender and assure the copyholds at his own cost, does not make him liable to discharge the fine. *Graham* v. *Sime*, 1 East, 632.

(*b*) In the absence of an agreement to the contrary, a purchaser has a right to require the estate to be surrendered in person, and not by attorney, unless an actual necessity appears for it. Sugd. Vend. & Pur. i. 450. And indeed a doubt, though certainly a very groundless one, has sometimes been raised in practice, whether a copyholder *could* surrender by a power of attorney. This doubt probably arose from not sufficiently distinguishing a common surrender from a surrender warranted only by special custom; which last, as it should seem, must be made in person. Scriven on Copyholds, i. 155.

of the lord or lords, lady or ladies of the said manor, according to the custom of the said manor (*a*), to the use of the said C. D., his heirs and assigns for ever, All &c. [*parcels*], together with all ways, paths, passages, waters, water-courses, commons, common of pasture, liberties, privileges, easements, profits, commodities, and appurtenances whatsoever, to the said messuages, lands, and hereditaments, and other the said customary or copyhold premises hereinbefore covenanted to be surrendered as aforesaid, and to every or any of them, or any part or parcel thereof, belonging or in anywise appertaining, or with them or any of them held, used, occupied or enjoyed, reputed, deemed, taken or known to be part or parcel of them or any of them, To the intent that (*b*) the said C. D., or his heirs, may be admitted tenant or tenants of the said copyhold hereditaments; to hold the same to him or them, his or their heirs and assigns for ever, at the will of the said lord or lords, lady or ladies of the said manor by copy of court roll, according to the custom of the same manor; and by and under the rents, suits, and services therefore due, and of right accustomed to be paid and performed; And that in the meantime and until such surrender shall be made, and the said C. D. or his heirs shall be admitted tenant or tenants under or by virtue of

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(*a*) When purchased from mortgagor and mortgagee, add,—

"And the said E. F. [*mortgagee*] shall and will forthwith acknowledge satisfaction of the said principal sum of £—, and all interest due in respect thereof, on the court-rolls of the said manor."

(*b*) Or, when the equity of redemption only is to be conveyed,—

"To the intent that such surrender may operate as an equitable assurance of the said copyhold hereditaments unto the said C. D., his heirs and assigns, and that he and they may thereby become entitled to the equity of redemption, and to a surrender of the legal estate of the said copyhold hereditaments, pursuant to the condition of the said in part recited bond or obligation, on payment of the said principal sum of £—— and the interest thereof."

the same surrender or surrenders respectively, he the said A. B., and his heirs, shall stand and be seised or possessed of the same copyhold hereditaments, and every part and parcel of the same, with the appurtenances; Upon trust for and for the sole benefit of the said C. D., his heirs and assigns (*a*).

LXIX. Covenant, promise, and agree with and to the said C. D., his heirs and assigns, by these presents, that (*b*) To surrender copyholds. (*In mortgages*).

(*a*) If no surrender has been made by the *former* vendor, recite that fact, and that it is intended that he should surrender the copyhold hereditaments to the purchaser. The immediate vendor ought then, with the privity and concurrence of the former vendor, testified &c., to covenant that the former vendor or his heirs shall surrender &c., according to the common form. Or, the former vendor may, at the request &c. of the immediate vendor, covenant to surrender &c. The first mode, however, is the most technical and correct.

(*b*) When previous mortgagees, who have not been admitted, are paid off,—

"That the said A. B., his heirs, executors, or administrators, shall or will, at his and their own costs and charges, forthwith, as soon as conveniently can be after the execution of these presents, cause or procure satisfaction to be entered on the court-rolls of the manor of A., in the said county of B., on the said conditional surrenders made to the said E. F. and G. H. respectively as aforesaid, to the intent and so that the said conditional surrenders respectively may be vacated and discharged; and also that he the said A. B., or his heirs, and all and every other person or persons whose concurrence shall be deemed necessary and expedient in that behalf, shall and will, at the like costs and charges of the said A. B. [*mortgagor*], his heirs, executors, or administrators, forthwith, as soon as can be after the execution of these presents, and either in court or out of court, and either in person or by attorney, as the said C. D. [*mortgagee*], his heirs, executors, administrators, or assigns, may require, well and effectually surrender into the hands of the lord or lords, lady or ladies of the said manor, according to the custom of the said manor, all" &c. &c.

he the said A. B., and his heirs, and all other necessary parties, shall and will, at his or their own costs and charges, at or before the next court to be holden in and for the manor of A. in the county of B., surrender or cause and procure to be surrendered into the hands of the lord or lady of the said manor, according to the custom of the said manor, All &c. to the use of the said C. D., his heirs and assigns, to be held of the lord or lady of the said manor by the rents and services therefore anciently due and of right accustomed; Upon condition (*a*) to be void on payment by the said A. B., his heirs, executors, administrators, or assigns, to the said C. D., his executors, administrators, or assigns, of the said sum of £——, with interest for the same, after the rate, in the parts, shares, and proportions, and on or at the days or times hereinbefore mentioned or appointed for payment thereof respectively (*b*).

Parcels and general words.

(*a*) In an annuity deed, comprising freeholds as well as copyholds,—

In annuity deeds.

"Nevertheless, upon and for such trusts and purposes as will correspond with the uses, charges, trusts, powers, intents, and purposes which are hereby limited, expressed, and declared touching and concerning the freehold hereditaments hereby released or otherwise assured, or intended so to be, or as near thereto as the nature and quality of the tenure of the said copyhold hereditaments and the custom of the said manor will admit, to the intent that the said copyhold hereditaments may be charged and chargeable with the payment of the said annuity or yearly sum of £——."

(*b*) If the condition be performed, that is, if the loan be repaid according to the terms of the surrender, the surrenderor, even though the mortgagee has been admitted, will be in of his old estate, and may accordingly re-enter without being again admitted. But if the loan be not paid until after the time limited, and the mortgagee has been admitted, then a new surrender must be made. When no admittance has taken place, the practice is, on payment of the money—whether such payment was made either before or after the time prescribed—to make an entry on the rolls of the fact of such payment. But after forfeiture of the condition, the more correct practice is, for the mortgagee not merely to acknowledge payment, but also to authorize the steward to vacate the surrender. Coote, p. 132; Scriven, i. 242.

To surrender copyholds to the use of trustees of settlement.

LXX. Covenant, promise, and agree with and to the said C. D. and E. F., their heirs and assigns, by these presents, that he the said A. B., or his heirs, shall and will, at the next court baron to be held in and for the manor of A., at his own proper costs and charges, surrender into the hands of the lord or lords of the said manor for the time being, according to the custom of the said manor, All &c. to the use of the said C. D. and E. F., their heirs and assigns; to hold the same unto the said C. D. and E. F., their heirs and assigns, at the will of the lord or lady of the said manor, by copy of court roll, by the rents and services therefore due and of right accustomed; Upon the trusts nevertheless, and to and for the intents and purposes hereinafter expressed or declared of or concerning the same (*a*).

By vendor for the release of his wife's dower, if the survivor, and in the mean time to indemnify purchaser.

LXXI. Covenant, promise, and agree with the said A. B., his heirs and assigns, that in the event that he the said C. D. shall die in the lifetime of the said E. his wife, the said E. D., on the request of the said A. B., his heirs and assigns, and at the costs and charges of the said C. D., his heirs, executors, or administrators, shall or will make, execute, and deliver to the said A. B., his heirs or assigns, a good and effectual release of and for all and all manner of dower and thirds, right and title of dower and thirds, of her the said E. D. out of the freehold lands and hereditaments hereby granted and released, or intended so to be, and of all writs (*b*), suits, and proceedings for recovering such dower or thirds, or obtaining an assignment thereof; and also that in the meantime, after the decease of the said C. D., and thenceforth until such release shall be made or executed, the heirs, executors, or administrators of the said C. D. shall or will from time to time indemnify, save harmless, and keep indemnified the said A. B., his heirs, executors, administrators, and assigns, of and from all claims and demands of the said E. D. to dower, or any right or title of dower, in or out of

(*a*) As to the lord's recognition of trusts, vide Scriven, i. 481, where the cases are collected and commented upon.

(*b*) Writs of dower are within the saving of sect. 36 of the stat. 3 & 4 Will. 4, c. 27, by which so many real and mixed actions were abolished.

the said freehold lands and hereditaments hereby granted and released, or intended so to be, and all costs, charges, damages, and expenses which shall be incurred, borne, suffered, and disbursed by the said A. B., his heirs, executors, administrators, and assigns, for or on account of such dower or thirds, or claim or demand of dower or thirds, or of any right or title to the same (*a*).

By husband to procure waiver of wife's equity (by examination in Chancery) to dividends bequeathed to her for life. (In assignment to a purchaser for the joint lives of husband and wife).

LXXII. Covenant and agree with the said C. D., his executors, administrators, and assigns, that he the said A. B. shall and will, within —— months after the execution of these presents, or as soon thereafter as shall be practicable, procure the consent of the said C. B., to be taken in Her Majesty's High Court of Chancery, or before commissioners duly authorized in that behalf, on private examination of the said C. B., for the purpose of waiving her right in equity to have the said dividends, &c. hereby assigned or otherwise assured or intended so to be, or any part thereof, applied for her maintenance in the event of the said A. B. refusing, or becoming unable to maintain his said wife or otherwise.

That infant heir when of age shall confirm and discharge premises from his share of purchase money.

LXXIII. Covenant, promise, and agree with and to the said A. B., his heirs, appointees, and assigns, that the said C. D., when or after he shall have attained his age of twenty-one years, or any person or persons being his heir or heirs at law, executors, or administrators, when of age, shall or will, upon the request and at the costs and charges of the said A. B., his heirs, appointees, or assigns, make, do, and execute all acts and assurances whatsoever, for confirming and giving effect to these presents, and the assurance hereby made, and discharging the said messuage &c. of and from the share of the said C. D. of and in the purchase money or sum of £——, as by the said A. B., his heirs, ap-

(*a*) Since the stat. 3 & 4 Will. 4, c. 105, has afforded such great facilities for barring dower, this Form is of very limited application. It may still be applicable, however, to the case of one who was married before the 1st of January, 1834; and whose concurrence in a release cannot, under present circumstances, be conveniently obtained.

pointees, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, and be tendered (*a*) to be made, done, and executed.

For enjoyment and further assurance to be permitted and made by sons and issue male, and trustees for them.

LXXIV. Covenant, promise, and declare with and to the said C. D., his heirs and assigns, that the sons, if there shall be any, of the said E. F., and their heirs, issue male, and assigns, and all persons claiming under or in trust for or as guardians of them or any of them, shall and will from time to time, and at all times, permit and suffer the said C. D., his heirs and assigns, to have, hold, occupy, and enjoy, and receive, take, and retain the rents and profits of the said messuages &c. hereby released, or otherwise assured or intended so to be, with the rights, members, and appurtenances, without any let, suit, eviction, ejectment, or disturbance whatsoever; and free and clear of and from all estates, charges, and incumbrances whatsoever, to be made, done, or committed by them or any of them; And further that such sons, (if any), and their respective heirs and issue male, and all persons rightfully claiming under them, or any of them, shall and will from time to time, on the reasonable request, and at the costs and charges of the said C. D., his heirs, appointees, and assigns, and when competent and of ability to do such acts and make such further assurance, make, do, acknowledge, execute, and perfect, or cause or procure to be made, done, acknowledged, executed, and perfected, all such acts, deeds, and assurances whatsoever, as shall be necessary or expedient for conveying and assuring the said messuages &c. hereby released, or otherwise assured or intended so to be, with their rights, members, and appurtenances, to the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore limited, expressed, and declared thereof, for the benefit of the said C. D., his heirs, appointees, and assigns, and discharged of and from all the estates, rights, titles, and interests of them the said sons, and their heirs and issue male, and all persons rightfully claiming or to claim under or in trust for them or any of them.

(*a*) Vide Sugd. Vend. & Pur. i. 247.

That first tenant in tail on attaining twenty-one shall bar estate tail, &c., and convey to the purchaser in fee; and that younger children or issue of marriage, or other persons entitled to portions, on attaining twenty-one, shall release from payment of same.

LXXV. Covenant, promise, and agree with and to the said C. D., his heirs, executors, administrators, and assigns, in manner following; that is to say, that when and as soon as any person who shall, for the time being, be the first tenant in tail of all or any part of the said closes and hereditaments called A., under the uses declared by the said indenture of release and settlement, bearing date on or about the —— day of ——, shall have attained the age of twenty-one years, such person shall upon the request of the said C. D. [*purchaser*], his heirs or assigns, and at the costs and charges of the said A. B. [*vendor*], his heirs, executors, or administrators, make, do, and execute all such acts and assurances, whether by deed enrolled or not enrolled, as shall be requisite for enlarging the same estate tail into an estate in fee-simple, discharged from all remainders and reversions expectant thereon, of and in the said closes and hereditaments called A., or any part or share thereof, and for conveying and assuring the same unto and to the use of the said C. D., his heirs and assigns for ever; And further, that when and as each of the younger children or issue of the said marriage, or other person who for the time being shall be entitled to all or any part of the said sum of £——, directed to be raised for the portions of such younger children and issue, shall attain the age of twenty-one years, such person or persons respectively shall, at the costs and charges of the said A. B., his heirs, executors, or administrators, do all such acts as shall be requisite for releasing the said C. D., his heirs and assigns, and the said toft, fields, and hereditaments comprised in the said indenture, bearing date &c., of and from the payment of the said sum of £——, or his, her, or their part or share, or respective parts or shares of the same, and all and every sum and sums of money by way or in the nature of maintenance.

That issue in tail shall, when of age, convey their shares discharged of estates tail and remainders, &c.; and that issue in tail shall per-

LXXVI. Covenant, promise, and agree to and with the said C. D., her heirs and assigns, that the said A. B., and also any child or children of the said A. B. and C. his wife, to be hereafter born, when and as soon as they shall respectively attain their respective ages of twenty-one years, or as soon after as they respectively shall be thereunto requested,

or in case of their or any of their deaths in the meantime leaving issue, then their issue inheritable to their estates tail shall and will, on the request and at the costs and charges of the said E. F., his heirs or assigns, and without any further recompence or consideration to be paid by the said C. D., her heirs and assigns, make, do, and execute all such acts, deeds, and assurances in the law whatsoever, either by deed or deeds enrolled or not enrolled, or other assurances whatsoever, for effectually, lawfully, and absolutely granting, conveying, and assuring the part or share, or the respective parts and shares of the said A. B., and such subsequent born child or children respectively, of and in the said messuage or hereditaments hereby released, or intended so to be, unto and to the use of the said C. D., her heirs and assigns for ever, or to such uses as she or they shall appoint, discharged of and from all estates tail, and all reversions and remainders expectant or depending thereupon, and enter into the same or the like covenants for title as are hereinafter contained; and that the said A. B., and such subsequent born child or children respectively, their heirs, issues, and assigns, shall and will in the meantime permit and suffer the said C. D., her heirs and assigns, to hold and enjoy the same messuage and hereditaments, without any let, eviction, ejection, suit at law or in equity, interruption, claim or demand whatsoever, of, from, or by the said A. B., or other child or children respectively, or any of them, their, any, or either of their heirs, issue, executors, administrators, or assigns.

mit covenantee to enjoy in the meantime.

LXXVII. Covenant, promise, and agree with and to the said C. D., his heirs and assigns, that he the said A. B., his heirs, executors, or administrators, shall and will cause and procure the said E. F., G. H., and I. K., and all and every other the child or children, if any, of him the said A. B., who may be hereafter born, and who by virtue of the said will of the said A. A. deceased shall or may have or be entitled to any share or shares or other estate or interest of, in, to, or out of the said one undivided part or share late of the said A. A. of and in the said messuages and hereditaments, and of and in their appurtenances or any part thereof,

That children when of age, or their heirs or devisees, shall convey their interest in one undivided eighth part of hereditaments to the purchaser of the other parts.

when and as soon as the same children shall respectively attain their respective ages of twenty-one years, or as soon thereafter as he, she, or they shall be thereunto requested by the said C. D., his heirs, appointees, or assigns; and in the event of the death of any or either of the same children before they shall have executed such conveyances and assurances as after mentioned, then shall and will cause and procure the heirs or respective heirs, or devisee or devisees of the said children respectively, on the request and at the costs and charges of the said C. D., his heirs, appointees, or assigns, and without any further recompense or consideration to be paid by the said C. D., his heirs, appointees, or assigns, for so doing (otherwise than some nominal consideration), to make, do, and execute all such acts, deeds, and assurances in the law whatsoever, either by deed or deeds inrolled or not inrolled, or other assurances whatsoever, as by the said C. D., his heirs, appointees, or assigns, or his or their counsel in the law shall be reasonably devised and required for effectually, lawfully, and absolutely granting, conveying, and assuring all their estates, rights, and interests of and in the one undivided eighth part or share late of the said A. A. deceased of and in the said messuages, hereditaments, and premises, seven undivided eighth parts whereof are intended to be hereby released or otherwise assured; To the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore limited, expressed, and declared of and concerning the shares, hereditaments, and premises hereby released and conveyed, or otherwise as the said C. D., his heirs, appointees, or assigns, shall direct.

That persons interested under the limitations in a will shall, when of age, convey, discharged of estates tail and remainder over; to permit names to be used in any action of ejectment to recover possession; for indemnity against

LXXVIII. Covenant, promise, and agree with and to the said C. D., his heirs and assigns, that they the said A. B. and his sons and daughters respectively, and their heirs, heirs of their body, and assigns respectively, and all and every other person or persons who for the time being, under or by virtue of the limitations contained in the will of the said E. F. deceased, is, are, or shall be entitled to any estate or interest of and in the said messuages hereinbefore granted and released as aforesaid, (except the trustees of the said term and for supporting contingent remainders), shall and will from

time to time, when he or they shall be of full age, and in England or Wales, and on every reasonable request of the said C. D., his heirs or assigns, or his or their counsel in the law, and at the costs and charges in all things of the said C. D., his heirs or assigns, make, do, and execute, and join and concur in making, doing, and executing, all such grants, releases, and confirmations, statutory deeds (*a*) and other deeds, either inrolled or not inrolled, and other assurances whatsoever as shall be deemed advisable and expedient for more effectually and satisfactorily conveying, confirming, and assuring unto and to the use of or in trust for the said C. D., his heirs and assigns for ever, and for all the estate and interest, or estates and interests which the person or persons required to make such assurances as aforesaid have or hath, or shall or may have therein, all the said messuages and other hereditaments hereinbefore granted and released, with the appurtenances, discharged of all estates tail and remainders over which it shall be in the power of the person or persons required to make such assurances as aforesaid to defeat or dispose of by means of such assurances respectively, or any of them (*b*); And also, that in case it shall be necessary for the said C. D. at any time hereafter to support any action or actions of ejectment, to recover the possession of the said messuages and other hereditaments hereinbefore granted and released, or intended so to be, with the appurtenances, then the said G. H. and I. K., or the survivor of them, or the executors, administrators, or assigns of such survivor, shall suffer his or their names or name to be made use of in any such ejectment or ejectments, on being indemnified by the said C. D., his heirs or assigns, from all costs, charges, and

claims under recited will; and for repayment of purchase-money on nonperformance of covenants upon having reconveyance.

(*a*) Sir Edward Sugden suggests, that assurances operating under the act which abolished Fines and Recoveries should, for brevity's sake, be termed "statute-deeds." But surely such a barbarous compound ought not to be admitted while we have "statutory," which is not only a current word, but warranted by analogy. No term, however, expressive merely of the *legislative* origin of the deeds in question is sufficiently adequate; for they are not the *only* instruments operating under acts of parliament.

(*b*) Vide 3 & 4 Will. 4, c. 74, s. 15.

expenses which he or they may be subject or liable to on account thereof, and shall not afterwards release or otherwise discharge any such action or actions; And further, that they the said L. M. and N. O., and their heirs, executors, administrators, or assigns respectively, shall from time to time and at all times hereafter, at her, his, and their own costs and charges, well and sufficiently indemnify and save harmless the said C. D., his heirs, executors, administrators, and assigns, and every of them, and his and their goods, chattels, and effects, and in particular the messuages and other hereditaments hereby granted and released or intended so to be, and every part thereof, of, from, and against all and all manner of ejectments, evictions, suits at law and in equity, claims and demands whatsoever, by reason or on account of any estate, right, title, or interest, estates, rights, titles, or interests of and in the said messuages and other hereditaments which is or are now subsisting under or by virtue or means of the said recited will of the said E. F. deceased; And moreover, that if on account of the breach or nonperformanee of all and every or any of the covenants hereinbefore contained, the said C. D., his heirs or assigns, shall be desirous of rescinding the contract for the purchase of the said premises, they the said L. M. and N. O.; their heirs, executors, administrators, and assigns, shall and will, on the request of the said C. D., his heirs or assigns, on having a reconveyance to be prepared at the costs of the said L. M. and N. O., or one of them, their or one of their executors or administrators, of all the estate and interest which shall then remain or subsist in the said C. D., his heirs or assigns, of and in the said messuages and other hereditaments hereinbefore granted and released, or intended so to be, to them the said L. M. and N. O., and the heirs of the said N. O. according to their respective estates and interests therein hereby conveyed, well and truly pay unto the said C. D., his heirs or assigns, as or in the nature of real estate, not only the said sum of £——, but such further compensation as he or they shall be entitled *to* by reason of the breach or nonperformance of the said covenant or covenants, and for such improvements as he or they may have made in the said premises or any part thereof; such compensation to be ascertained by two indifferent per-

sons; one to be named by the said C. D., his heirs or assigns, and the other by the said L. M. and N. O., or the heirs of the said N. O.

To do all acts required for enlarging estate tail in copyhold into a fee, and for assuring estate of covenantors.

LXXIX. Covenant, declare, and agree to and with the said G. H., his heirs and assigns, that they the said A. B., C. D., and E. F. respectively, and their respective heirs, issue, and assigns, as far as it shall be in their respective power, and on the request of the said G. H., his heirs or assigns, and at the costs and charges in all things of the said I. K., his heirs, executors, or administrators, shall or will make, do, execute, and suffer all acts, deeds, surrenders (*a*), and proceedings whatsoever of and concerning all the said messuages &c. which shall be necessary or proper for enlarging the estate tail of the said A. B. therein into an estate in fee-simple, discharged of all remainders and reversions expectant and dependant on the same estate tail, and all provisoes, conditions, and collateral limitations affecting the same estate, and also for surrendering and assuring the several estates of them the said C. D. and E. F. of and in the same messuage &c. to the use of the said G. H., his heirs and assigns.

To refund consideration money with interest in case of eviction within one year.

LXXX. Covenant and agree with the said E. F., his heirs, appointees, and assigns, that in case there shall, at any time within twelve calendar months from the —— day of —— now last past, be any eviction of, or entry upon, or claim at law or in equity of all or any part of the said messuages &c., and such eviction, entry, or claim shall be made or grounded on a good title in any person or persons claiming in opposition or adversely to the said A. B. and C. D., or the title derived under them; and the said

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(*a*) If tenant in tail of copyholds has an *estate at law*, the conversion of his estate tail into "an estate of inheritance to him and his heirs, according to the custom of the manor," (for a copyholder cannot be said to have an estate in fee-simple, *that* being in the lord), must be effected by surrender; but if he has merely an *estate in equity*, then it may be done either by surrender, or by a deed, as provided by the stat. 3 & 4 Will. 4, c. 74, s. 53.

E. F., his heirs, appointees, or assigns, shall, upon the request, and at the costs and charges of the said A. B. and C. D., their heirs, executors, administrators, or assigns, be ready to reconvey all the estate and interest (if any) of him the said E. F., his heirs, appointees, or assigns, in the said messuages &c.; then and in that case the said A. B. and C. D., or one of them, their or one of their heirs, executors, or administrators, if thereunto required by the said E. F., his heirs, appointees, or assigns, before the expiration of twelve calendar months, to be computed as aforesaid, shall or will refund or pay to the said E. F., his heirs, appointees, or assigns, or to the executors or administrators of the said E. F., in trust for his heirs, appointees, or assigns, the whole of the said sum of £——, together with lawful interest for the same, from the day of the date of these presents, without any deduction or abatement on any account whatsoever.

That in case the vendor of certain undivided parts of an estate should at any time become seised of any of the remaining parts, the purchaser should have the option of purchasing the same at a stipulated price.

LXXXI. Covenant, promise, and agree to and with the said A. B., his heirs and assigns, that if he the said C. D. shall at any time or times hereafter, by reason or means of the death of all or any or either of his brothers or sisters now living, and hereinbefore named, or by reason or means or by virtue of any devise, gift, or purchase, or otherwise become seised of or well entitled unto an estate of inheritance in possession of and in the whole or any part or parts of the other and remaining undivided —— parts or shares of and in the said messuage or tenement, farm, lands, or hereditaments hereinbefore mentioned or described, then the said C. D. shall and will, from time to time, when and so often as he shall become seised of, or well entitled unto such estate of inheritance as aforesaid, and within the space of six calendar months next after he shall become so seised or entitled; or in case of the death of the said C. D., within the said space of six calendar months, then the heirs or devisees of the said C. D. shall and will within the aforesaid period of six calendar months, in case he, she, or they shall be then of full age; but if under age, then within the space of one month next after he, she, or they shall attain his, her, or their age or respective ages of twenty-one years, at the proper costs and charges in the law of the said A. B., his heirs, executors, administra-

tors, or assigns, (except as to the expense of &c., and which expense shall be born and paid by the said C. D., his heirs, executors, or administrators), by such good and sufficient deed or deeds, conveyances, and assurances in the law, as the said A. B., his heirs or assigns, or his or their counsel shall in that behalf advise or require; and upon payment unto him the said C. D., or his heirs or devisees, exclusive of his executors or administrators, of such sum or sums of money as are hereafter covenanted to be paid, well and effectually convey and assure, or cause to be conveyed and assured, unto the said A. B., his heirs or assigns, or as he or they shall direct or appoint, the inheritance in fee-simple in possession, free from all incumbrances, of and in all such part or parts of the said messuage or tenement, farms, lands, and hereditaments hereinbefore mentioned and described, as shall then have devolved upon or otherwise become vested in the said C. D., and to which he shall be then well entitled as aforesaid, or which upon the decease of the said C. D. may have descended to and devolved upon and become vested in his heirs or devisees as hereinbefore mentioned; And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said C. D., his heirs, executors, administrators, and assigns, that he the said A. B., his heirs, executors, administrators, and assigns, some or one of them (the heirs being, as between them and the executors and administrators, to be primarily liable) shall and will from time to time well and truly pay or cause to be paid unto the said C. D., his heirs, executors, administrators, or assigns, at and immediately upon the execution of the said several conveyances and assurances, so from time to time to be made and executed as last aforesaid, such sum or sums of money as shall be at and after the rate of £—— for each and every —— part so conveyed from time to time, and in the same proportion for any greater or less share than —— part.

To indemnify purchaser from legacy, and procure release from legatee; such release to be enrolled in

LXXXII. Covenant, declare, and agree to and with the said C. D., his heirs and assigns, that the said A. B., his heirs, executors, or administrators, shall or will from time to time indemnify, save harmless, and keep indemnified the said C. D., his heirs, executors, administrators, cestui que

Chancery for safe custody.

trust, and assigns, and his and their lands and tenements, goods, chattels, and effects, and in particular the messuage &c. hereby released or otherwise assured, or intended so to be, of and from the payment of the said legacy or sum of £——, and the interest thereof, and every part of the same; and of and from all suits at law and in equity, costs, losses, charges, damages, and expenses, by reason or on account or in respect of the said legacy, or the interest thereof, or any part thereof; and that as soon as circumstances will permit, the said A. B., his heirs, executors, or administrators, shall or will procure the said legacy of £——, and the interest thereof, to be well and effectually released by the said E. F. [*legatee*], her executors or administrators, and also by her husband (if any); such release to be duly acknowledged by the person or persons by whom such release shall be executed, and to be duly inrolled in her Majesty's High Court of Chancery for safe custody, for the benefit of all persons who have purchased, or shall purchase, all or any of the lands and hereditaments charged with the payment of the same legacy, and the interest thereof, or any part thereof.

To obtain a surrender of term of years, and conveyance of the estate of another, as far as concerns the estate in question; to produce discharges for portions, and to indemnify purchaser.

LXXXIII. Covenant, declare, and agree to and with the said E. F., his heirs, appointees, and assigns, that they the said A. B. and C. D., or one of them, their or one of their heirs, executors, or administrators, shall or will, when and as soon as circumstances will permit, and he or they shall be thereunto required by the said E. F., his heirs, appointees, or assigns, procure or obtain for and in the name or names of the said E. F., his heirs, appointees, or assigns, a surrender of the residue of the said term of one thousand years, and a conveyance of the estate late of the said G. H., as far as the same relate to or concern the messuages, lands, and hereditaments hereby released or otherwise assured, or intended so to be, or any part of the same; and produce to the said E. F., his heirs, appointees, or assigns, from time to time, the discharges which shall be taken for the said portions and maintenance money, or interest, after the same shall be obtained; and shall or will procure such releases or discharges as soon as the same can be ef-

fectually made by the persons entitled thereto, or otherwise procure for the said E. F., his heirs, appointees, or assigns, the said messuages &c. hereby released or otherwise assured, or intended so to be, to be released and discharged of and from the same portions, maintenance money, or interest, by the person or persons then entitled thereto; and shall or will from time to time indemnify, save harmless, and keep indemnified the said E. F., his heirs, appointees, and assigns, and the messuages, &c. hereby released or otherwise assured, or intended so to be, of, from, and against all and all manner of ejectments, evictions, suits at law and in equity, payments, contributions, costs, losses, charges, damages, and expenses whatsoever, by reason or on account of the said term of one thousand years, estate late of the said G. H., and portions of £——, maintenance money, and interest, or any or either of them, or any thing relating thereto.

To pay portion and maintenance, and indemnify purchaser therefrom; and that after payment, term to be assigned in trust for purchaser; and in the meantime (subject to portion and maintenance) to be held in trust for him.

LXXXIV. Covenant, promise, and agree with and to the said C. D., his heirs, executors, administrators, appointees, and assigns, that he the said A. B., his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid to the said E. F., his executors or administrators, the said portion or sum of £——, and also all maintenance money and interest which shall be payable in respect thereof, as and when the same shall become due and payable; and also shall and will from time to time, and at all times hereafter, at his or their own proper costs and charges, defend, save harmless, and keep indemnified the said C. D., his heirs, executors, administrators, appointees, and assigns, and every of them, and also the said messuage or tenement, closes, and hereditaments, hereby appointed and released or otherwise assured, or intended so to be, of, from, and against the same portion or sum, maintenance money, and interest, and all costs, losses, charges, damages, and expenses whatsoever, which he, they, and every of them, severally and respectively, shall or may incur, bear, pay, suffer, sustain, and lay out, for, or by reason or means, or on account of the same portion, maintenance money, and interest, or any of them; and also of, from, and against all and every action or actions,

suit or suits at law or in equity, which at any time, and from time to time hereafter, shall or may be brought, sued, commenced, or prosecuted against him the said C. D., his heirs, executors, administrators, appointees, or assigns, for or on account of the said portion or sum of £—— maintenance money, and interest, or any part thereof; and further, that after payment of the said portion, maintenance money, and interest, the then trustee or trustees of the residue of the said term of one thousand years, as far as the same relates to or comprises the said messuage or tenement, closes, and hereditaments, hereby apportioned and released, or otherwise assured, or intended so to be, shall or will, on the request and at the costs and charges of the said C. D., his heirs, executors, administrators, appointees, or assigns, assign the same messuage or tenement, closes, and hereditaments, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, except as aforesaid, unto any person or persons of the nomination of the said C. D., his heirs, appointees, or assigns, for the residue of the said term of one thousand years therein, in trust for him the said C. D., his heirs, appointees, and assigns, and to attend the inheritance for his and their benefit; and in the meantime shall or will, subject and without prejudice to the trust for raising and paying the said sum of £——, maintenance money, and interest, stand and be possessed of the same messuage or tenement, closes, and hereditaments, with the appurtenances, except as aforesaid, in trust for and for the benefit of the said C. D., his heirs, appointees, and assigns.

To pay rent and observe covenants, and indemnify lessee therefrom. (In assignment of lease).

LXXXV. Covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, by these presents, that he the said C. D., his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter during the continuance of the said term of —— years, pay the said yearly rent of £——, by the said hereinbefore in part recited indenture of lease reserved, as and from the —— day of ——, and perform, fulfil, and keep all and singular the covenants and agreements in the said indenture contained, and which on the part of the said te-

nant or lessee are and ought from henceforth to be performed, fulfilled, and kept; and of and from the same rents, covenants, and agreements, and all costs, charges, damages, and expenses to be incurred or sustained by reason or on account of any breach, neglect, or default of or in payment, observance, or performance of the same respectively as aforesaid, shall and will save harmless and keep indemnified the said A. B., his heirs, executors, and administrators, and his and their estate and effects whatsoever and wheresoever.

To pay rent and observe covenants in the original lease, and to indemnify lessee therefrom. (In an assignment of the lease).

LXXXVI. Covenant and agree with the said A. B., his heirs, executors, and administrators, that he the said C. D., his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter during the continuance of the said term of —— years, in and by the said hereinbefore in part recited indenture of lease granted, well and truly pay or cause to be paid the yearly rent in and by the same indenture of lease reserved, and observe, perform, fulfil, and keep all and singular the provisoes, covenants, clauses, and agreements in the same indenture of lease contained, and which henceforth on the part of the lessee or assignee of the said premises thereby demised, are and ought to be observed, performed, fulfilled, and kept; and shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said A. B., his heirs, executors, or administrators, and his and their lands and tenements, goods and chattels, of, from, and against the payment of the said rent and performance of the said provisoes, covenants, clauses, and agreements, and of, from, and against all and all manner of action and actions, suit and suits, cause and causes of action and suit, claims, pretensions, and demands whatsoever, for or on account thereof or in any wise relating thereto.

To observe the covenants contained in a former lease between the same parties as if they had been

LXXXVII. Covenant, promise, and agree with and to the said C. D., his heirs, executors, and administrators, that he the said A. B. [*lessee*], his executors, administrators, or assigns, shall and will from time to time, and at all times during the continuance of the term hereby granted, in all

repeated in the present (a).

things well and truly observe, perform, fulfil, and keep in relation to the premises hereby demised, the several cove-

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(a) To obviate the necessity of repeating the same covenants in each successive lease of the same land, this Form may be used with advantage, at least on the score of economy, particularly in certain farming leases, wherein the provisions regulating the mode of husbandry are often exceedingly voluminous.

The principle of this plan was adopted by the Wesleyan Methodists in 1832, for the settlement of the chapels in the Methodist connexion. It had been usual to convey these chapels to the use of trustees upon trust, to permit the preachers appointed by the Conference to preach, &c. therein, with a proviso that no person should deliver any other doctrines than such as are contained in certain publications therein referred to. In a society so constituted as that of the Wesleyan Methodists, it is a matter of great moment to attain uniformity in the deeds of settlement and declarations of trusts of their chapels. With this view, it was proposed that a "Model Deed" or conveyance of chapel ground, containing the provision above mentioned, and all other necessary powers, clauses, and declarations, should be enrolled in Chancery, pursuant to stat. 9 Geo. 2, cap. 36; and with the further design of preventing needless expense, that, in all subsequent chapel deeds, the estate should be conveyed with reference to this "Model Deed." Acting under the advice of Sir Edward Sugden, Mr. Bell, Mr. Brodie, and others, the Conference adopted this plan, and strongly recommended the general adoption of it to the connexion at large. Accordingly, when chapel land is purchased for the society, it is now conveyed to trustees upon the trusts of the Model Deed, in conformity to the following form:—

"Upon such and the same trusts, and to and for such and the same ends, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and agreements as are expressed, contained, and declared, or referred to in and by a certain indenture of release bearing date on or about the 3rd day of July, 1832, and made or expressed to be made between John Sutcliffe, Benjamin Garside, Francis Farnell, John Swallow, Thomas Firth, Robert Wilson, Samuel Nayler, John Fearby Sutcliffe, Thomas Fox Sutcliffe, Charles Swallow, John Swallow the younger, Samuel Morley, Joseph Garside, accountant, William Farnell, and Joseph Garside, wood-turner, therein respectively described of the first part, the Rev. George Marsden therein described of the second part, and James

nants and agreements which on his and their part are expressed and contained in a certain indenture of lease, bearing date on or about the —— day of ——, ——, and made or expressed to be made between the said C. D. [*lessor*] of the one part, and the said A. B. of the other part, in the same manner as if the said several covenants and agreements had been inserted in these presents in relation to the premises hereby demised; save and except the covenant therein contained for payment of the yearly rent of £——, and &c.

By assignee to perform covenants in original lease (except covenant for payment of rent) and to indemnify assignor. (In assignment to a purchaser by a tenant of several houses at an entire rent of one house free from incumbrances) (*a*).

LXXXVIII. And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter during the continuance of the said term of ninety-nine years, perform, fulfil, and keep all and singular the covenants and agreements (except those relating to the said yearly rent of £——, in the said hereinbefore in part recited indenture of lease contained), on the part of the tenant or lessee to be observed and performed, so far as the same ought to be observed and performed in respect of the said messuage or tenement hereinbefore assigned, or expressed and intended so to be; and of and from all the said covenants and agreements to the extent afore-

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Brown therein also described of the third part; and enrolled in Her Majesty's High Court of Chancery, on the 25th day of July, 1832; being a deed made for the settlement of a piece or parcel of ground and chapel, or place of religious worship, with the appurtenances, situate at Skircoat, in the parish of Halifax and county of York, for the use of the people called Methodists, in the connexion established by the late Rev. John Wesley; and to, for, or upon no other use, trust, intent, or purpose whatsoever."

The case submitted to counsel, with the opinions of Sir Edward Sugden and Mr. Brodie, will be found in the preface to the printed copy of the "Model Deed."

(*a*) Vide *Fildes* v. *Hooker*, 3 Madd. 193; *Warren* v. *Richardson*, You. 1, cited in Vol. I. book i. sect. 1, art. vi.

said; and of and from all costs, charges, and expenses to be incurred or sustained by reason of or on account of any breach, neglect, or default of or in observance or performance of the same respectively as aforesaid, shall and will save harmless and keep indemnified the said A. B., his executors, administrators, and assigns, and his and their estates and effects whatsoever and wheresoever.

By assignor to pay entire rent and perform covenants as to part of premises in original lease not assigned, and to indemnify assignee. (To follow the foregoing form). Vide Tit. IX. arts. lv. and lvi. p. 616.

LXXXIX. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, by these presents, that he the said A. B., his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter during the continuance of the said term of ninety-nine years, pay the whole of the said yearly rent of £—— by the said hereinbefore in part recited indenture of lease reserved; and also perform, fulfil, and keep all and singular the covenants and agreements in the said indenture contained on the part of the tenant or lessee to be observed and performed, in respect of the said messuages and premises therein comprised, which are not hereinbefore assigned or intended so to be; and of and from the entirety of the same rents, and the said covenants and agreements to the intent aforesaid, and all costs, charges, and expenses to be incurred or sustained by reason or on account of any breach, neglect, or default of or in payment, observance, or performance of the same respectively as aforesaid, shall and will save harmless and keep indemnified the said C. D., his heirs, executors, administrators, and assigns, and his and their estate and effects whatsoever and wheresoever, and particularly the messuages and premises hereinbefore assigned or intended so to be.

To indemnify assignee from evictions, &c. on account of breach of covenants in lease. (In assignment of lease).

XC. And also that he the said A. B., his heirs, executors, or administrators, shall or will indemnify, save harmless, and keep indemnified the said C. D., his heirs, executors, administrators, and assigns, of and from all evictions, ejectments, suits at law and in equity, costs, losses, charges, damages, and expenses whatsoever, by reason or on account of any breach or default of all, any, or either of the cove-

nants, conditions, and agreements contained in the said indenture of lease, as far as the same covenants, conditions, and agreements relate to or concern, and are henceforth to be performed in respect of all or any of the messuages or tenements, buildings, and premises comprised in the same indenture of lease, and not hereby assigned, or otherwise assured or intended so to be.

To indemnify against fee-farm rent, with grant of a power of distress.

XCI. Covenant and agree with the said C. D., his heirs, appointees, and assigns, that he the said A. B., his heirs, executors, administrators, or assigns, or some or one of them, shall or will from time to time, and at all times hereafter, defend, save harmless, and keep indemnified the said C. D., his heirs, appointees, and assigns, and every of them, and his and their and every of their lands, tenements, goods, chattels, and effects, and particularly the said messuage &c. hereby assured to the use of the said C. D., his heirs, appointees, and assigns as aforesaid, of, from, and against the said fee-farm rent of £——, and all actions, suits at law and in equity, distresses, claims, and demands, by reason or on account of any default in the said A. B., his heirs or assigns, in payment of the same fee-farm rent, when and as the same shall become due and payable. And the said A. B. doth hereby, for himself and his heirs, grant to the said C. D., his heirs, appointees, and assigns, that from time to time, and at all times hereafter, when and as often as the said C. D., his heirs, appointees, or assigns, shall pay all or any part of the said fee-farm rent of £——, or all or any part of the costs, charges, and expenses of any action or distress for recovering or enforcing payment of the same, the said C. D., his heirs, appointees, or assigns, shall or may distrain for the sum or sums which shall have been paid by him or them, in or upon all or any part of the freehold lands and hereditaments chargeable with the said fee-farm rent, which have been purchased by the said A. B. as aforesaid; and by means of such distress or distresses, levy and raise the same sum or sums of money, and for that purpose dispose of such distress or distresses in the same or the like manner as if such distress or distresses had been for a rent reserved on a lease for years.

To indemnify against the repairing of a chancel, and payment of a sum of money.

XCII. Covenant and agree with the said C. D. and E. F., their heirs and assigns, that he the said A. B., his heirs and assigns, being the owner or owners for the time being of the said manor &c. hereinbefore limited to the use of the said A. B., his heirs and assigns, shall and will from time to time, and at all times hereafter, perform the said duty or obligation, and pay the said annual sum of £——, and acquit, defend, save harmless, and keep indemnified the said C. D. and E. F., [*trustees to whom part of the estate was conveyed*], their heirs and assigns, and the said lands and hereditaments hereinbefore limited to the use of the said C. D. and E. F., their heirs and assigns, of and from the said duty or obligation and annual payment, and each of them respectively.

To indemnify against two annuities, with appropriation of a fund to answer them.

XCIII. Covenant and agree with the said C. D. and E. F., their heirs, executors, administrators, and assigns, that he the said A. B., his heirs, executors, and administrators, or some or one of them, shall or will from time to time, and at all times hereafter, indemnify, save harmless, and keep indemnified the said C. D. and E. F., and each of them, their and each of their heirs, executors, administrators, and assigns, of and from the payment of all or any part of the said annuities of £—— and £——, or either of them, or any contribution towards the same annuities, and each or either of them, and of and from all distresses, suits at law and in equity, costs, losses, charges, damages, and expenses, by reason or on account of the said annuities of £—— and £——, and each or either of them; And further, that the dividends, interest, and income of the stocks, funds, and securities in or upon which the said trust monies shall from time to time be invested, and the rents and profits of the messuages, lands, tenements, and hereditaments which shall be purchased with the same money, shall from time to time, during the continuance of the said annuities, be and be deemed the primary fund for payment of the same annuities respectively; and that in the meantime, and until the same purchase money shall be invested in the purchase of messuages, lands, tenements, and hereditaments, and such messuages, lands, tenements, and hereditaments, and the legal

estate thereof, shall have been effectually charged with the said annuities of £—— and £—— respectively, or such of them as shall be continuing, a sum of £—— 3 per cent. Consolidated Bank Annuities, in respect of each annuity, shall from time to time during the continuance of each of the same annuities respectively, be set apart and appropriated in the name or names of the trustee or trustees for the time being of the said hereinbefore recited indenture of release or settlement, as a fund for answering and paying the same annuities respectively, in exoneration or by way of indemnity of the said hereditaments hereby released or otherwise assured, or intended so to be.

To pay an heir-at-law a sum of money on his attaining twenty-one, and executing a conveyance, with interest for the same in the meantime.

XCIV. Covenant, promise, and agree to and with the said C. D., his heirs and assigns, that he the said A. B., his executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said E. F., when and as soon as he shall attain his age of twenty-one years, in case he shall attain that age, or unto such person or persons as shall or may be or become the heir or heirs-at-law of the said G. H. deceased, the full sum of £——, and without any manner of deduction whatsoever, on his the said E. F., or such other person or persons as aforesaid, executing a good and sufficient conveyance of all his or their share or shares, estate, right, claim, title, interest, and demand of and in the said messuages, tenements, or dwelling-house, and hereditaments and premises hereby released or otherwise assured, or intended so to be, unto the said A. B., his heirs, appointees, or assigns, and in such manner and upon such uses and trusts, and for such ends, intents, and purposes as he the said A. B., his heirs, appointees, or assigns shall direct; and in the mean time, during the minority of the person or persons who for the time being shall be the heir or heirs-at-law of the said G. H., shall or will well and truly pay or cause to be paid to the trustee or trustees, guardian or guardians for the time being of the said E. F., or other person or persons who for the time being shall be such heir or heirs-at-law, interest on the said last-mentioned sum of £—— at the rate of £—— per cent. per annum, half-yearly, on the —— day of ——, and the —— day of ——, and in that proportion for any less time than half a year.

Not to exercise a power to raise portions for children of a second marriage, or create a term for that purpose, and release of such power.

XCV. Covenant, promise, and agree to and with the said C. D. and E. F., their executors, administrators, and assigns, in manner following; that is to say, that he the said A. B. shall not nor will at any time or times hereafter exercise the power given or reserved to him in and by the said hereinbefore in part recited indenture of the &c., of charging the hereditaments by the same indenture granted and released, or therein mentioned, with the portion or portions of any child or children of him the said A. B. by a second marriage, or of creating any term or terms of years in the same hereditaments for raising the same portion or portions, in any manner by which the interest of the said C. D. and E. F., their heirs, executors, administrators, or assigns under these presents, shall be affected, charged, incumbered, or prejudiced; and that the said power shall be and be considered as suspended, released, and discharged, and is hereby released and discharged by the said A. B. to the said C. D. and E. F., their heirs, executors, administrators, and assigns, as far as the said C. D. and E. F., their heirs, executors, administrators, or assigns, can be affected or prejudiced by the exercise of the same power.

Not to erect a mill, &c. to deteriorate one conveyed, and to pay liquidated damages for any injury, &c.; such covenant

XCVI. Covenant and agree with the said C. D., his heirs, appointees, and assigns, that (*a*) he the said A. B., his heirs or assigns, or any person or persons claiming or to claim under him or them, shall not nor will at any time or times hereafter, without the consent in writing of the said

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Not to erect buildings against part of premises.

(*a*) Covenant, &c.—

"that he the said A. B., his executors, administrators, or assigns, or any person or persons claiming or to claim by, from, or under, or in trust for him or them or the said C. D., the lessee, shall not nor will, at any time hereafter during the term hereby granted or assigned, make, erect, or set up any buildings, wall, partitions, or other erections on the &c., part of the said messuage or tenement and buildings hereby assigned or intended so to be, so as to obstruct the light or air from coming to the same messuage or tenement and buildings as it hath been accustomed to do."

C. D., his heirs, appointees, or assigns, erect or build, or cause or procure to be erected and built any mill upon, or upon any cut or carrier to be made from, the stream running from the mill granted and released by the within-written indenture, and being within the distance of —— from the same mill; or cause to be done any act whatsoever which shall or may obstruct or retard the motion of the main wheel of and belonging to the said mill granted and released by the within written indenture; and that he the said A. B., his heirs and assigns, shall or will pay or cause to be paid to the said C. D., his heirs, appointees, and assigns, as and for liquidated damages, the sum of £—— for each and every day, or any part less than an entire day, during which the said C. D., his heirs, appointees, or assigns, shall receive any injury from the breach of any or either of the stipulations hereinbefore contained; and that the right to such stated damages shall not be or be deemed a waiver of the right of the said C. D., his heirs, appointees, or assigns, to abate any nuisance to the said mill of the said C. D., his heirs, appointees, or assigns, or to preclude him or them from the right of being relieved by the injunction of a court of equity, or any other means, legal or equitable.

not to be a waiver of right to abate nuisance, or of procuring injunction.

XCVII. Covenant, promise, and agree with and to the said A. B., his heirs and assigns, that he the said C. D., his executors and administrators, shall and will henceforth and from time to time stand and be possessed of, interested in, and entitled to the said judgment, as far as the same doth, can, shall, or may affect the said messuages, lands, and other hereditaments hereby released or otherwise assured, or intended so to be, in trust for the said A. B., his heirs and assigns, And further, that when and as soon as all the principal monies and interest due on the security of the said judgment shall be paid, satisfied, or otherwise discharged, the said C. D., his executors and administrators, shall or will, on the request and at the costs and charges of the said A. B., his heirs or assigns, acknowledge satisfaction on the record of the said judgment, or at the option of the said A. B., his heirs and assigns, release and discharge the said A. B., his heirs, executors, administrators, and assigns, and the said messuages,

By a judgment creditor to stand possessed of judgment in trust &c., and acknowledge satisfaction.

lands, and other hereditaments hereby released or otherwise assured, or intended so to be, of and from the said judgment, and all liens, charges, and demands whatsoever, by reason or on account of the same judgment.

By tenant in tail in remainder not to bring actions &c. against tenant for life in possession, for cutting timber, and that money produced by sale of timber during life of tenant in possession, if laid out in real estates, or appropriated as money, shall belong solely to such tenant.

XCVIII. Covenant, promise, and agree, to and with the said C. D., his heirs, executors, and administrators, that he the said A. B., his heirs, executors, administrators, and assigns, shall not, nor will at any time or times hereafter, commence or prosecute, or cause or procure to be commenced or prosecuted, any action or actions, suit or suits, or other proceeding either at law or in equity, against the said C. D., his heirs, executors, or administrators, for or by reason of the said C. D., his agents, stewards, servants, or workmen, by his order or on his account, cutting or felling any timber trees that now are or shall or may be standing and growing upon the said several tenements and hereditaments hereinbefore granted, bargained, and sold, or any part or parcel thereof, although the same shall not be wanted for the necessary reparations of the said premises; And further, that if any money to be received or paid on account of timber to be cut down or fallen as aforesaid during the life of the said C. D., shall be laid out in the purchase of real estate, then all the estate, right, and interest of the said A. B., his heirs and assigns, in the real estate to be so purchased, shall belong and be conveyed to the said C. D., his heirs and assigns; and that the said A. B., his heirs and assigns, shall and will concur in all acts necessary for settling the same real estate to the use of the said C. D., his heirs and assigns, for all the estate and interest which the said A. B. shall have or may convey in the same real estates; and that such money, if appropriated as money, shall, as far as the said A. B., his executors, administrators, and assigns shall be interested therein, belong to the said C. D., his executors, administrators, and assigns.

To pay mortgage money. (In first witnessing part).

XCIX. Now this indenture witnesseth, that in pursuance and part performance of the said agreement on the part of the said A. B., and for and in consideration of the sum of £—— of lawful money of Great Britain to the said A. B.

in hand well and truly paid by the said C. D., at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of £—— he the said A. B. doth hereby admit and acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said C. D., his heirs, executors, or administrators, for ever by these presents), he the said A. B. doth, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said A. B., his heirs, executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, the sum of £—— of lawful money of Great Britain, and interest for the same after the rate of £5 for every £100 by the year, to be computed from the day of the date of these presents, at the times and in manner following; (that is to say), the sum of £——, being one half-year's interest thereof, after the rate aforesaid, on the —— day of —— next; and the sum of £——, being the said principal money and another half-year's interest thereof, after the rate aforesaid, on the —— day of —— next, and which will be in the year of our Lord 18—, without making any deduction or abatement whatsoever out of the same sum of £—— and interest, or any part thereof respectively, for or in respect of any present or future taxes, charges, rates, assessments, payments, or impositions, or any other cause, matter, or thing whatsoever.

To pay mortgage money. (Immediately to precede the covenants for title).

C. Covenant, promise, and agree, with and to the said A. B., his executors, administrators, and assigns, by these presents, that he the said A. B., his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said C. D., his executors, administrators, and assigns, the aforesaid sum of £——, in the parts, shares, and proportions, on or at the days or times and in the manner in the aforesaid proviso or agreement mentioned or appointed for payment of the same respectively, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

To transfer stock advanced on mortgage.

CI. And the said C. D. doth, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said A. B., his executors, administrators, and assigns, by these presents, that he the said C. D., his heirs, executors, or administrators, shall and will transfer or cause to be transferred into the name or names of the said A. B., his executors, administrators, and assigns, or into the name or names of such other person or persons as aforesaid, the sum of £—— Bank Annuities, on or at the day or time and in the manner in the aforesaid proviso or condition (a) mentioned or appointed for the transfer of the same; and also shall and will well and truly pay or cause to be paid unto the said A. B., his executors, administrators, and assigns, such sum or sums of money in lieu of the interest, dividends, and annual produce thereof as aforesaid, in the shares and proportions, on or at the days or times, and in the manner in the aforesaid proviso or condition mentioned and appointed for payment of the same, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

To pay mortgage money on demand.

CII. And the said A. B. doth for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D. and E. F., their heirs, executors, administrators, and assigns, by these presents, that he the said A. B., his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid upon demand unto the said G. H., his executors, administrators, and assigns, the aforesaid sum of £——, or such part thereof as shall at the time of such demand remain due and payable, together with all interest after the rate aforesaid which shall from time to time accrue due in respect of the said sum of £——, and every or any part thereof, without any deduction or abatement whatsoever out of the said principal sum or interest, or any part thereof, and according to the true intent and meaning of these presents.

(a) Vide Tit. IX. art. viii., p. 584.

To pay balance of account. (In mortgage to bankers).

CIII. Covenant and agree with the said A. B., C. D., and E. F., and each and every of them, their and each and every of their executors and administrators, in manner following; (that is to say,) that he the said G. H., his heirs, executors, or administrators, or some or one of them, shall or will from time to time and at all times hereafter well and truly pay or cause to be paid unto them the said A. B., C. D., and E. F., their executors and administrators, all such sum and sums of money as shall from time to time be found due and owing to them respectively by him the said G. H., on balance of account for monies paid and advanced by them the said A. B., C. D., and E. F. respectively in paying or discharging the drafts or bills of exchange to be drawn by him the said G. H. on them the said A. B., C. D., and E. F., or any of them, or for or on account of the acceptance by them to pay such drafts or bills of exchange when due, or for or on account of their discharging or paying, at the request of the said G. H., any drafts, bills of exchange, or notes drawn by any other person or persons, or for or on account of their lending or advancing to him the said G. H. any sum or sums of money, at any time or times, or for or on account of any other matter, cause, or thing whatsoever, together with all such interest as shall from time to time be due and owing thereon, after the rate of £5 per cent. per annum.

That till payment of certain sums on mortgage and interest, sugar, rum, (except &c.) shall be shipped and consigned to Messrs. ——, to sell, and apply produce, and in trust to answer interest and pay certain monies and interest, and instalments; and surplus to mortgagor; with power to consignees to retain interest of debt due to

CIV. Covenant, declare, and agree to and with the said C. D. and E. F., their executors and administrators, that in the meantime, and until the said principal sum of £——, and the said mortgage debt of £—— respectively, and the interest thereof respectively, shall be paid and fully discharged, the sugar, rum, and other profits which from time to time shall be made or produced by or from the said plantations, or either of them, other than and except the rum which shall be sold in the said island of St. Christopher to defray the incidental expenses of management in the island, shall be shipped and consigned to Messrs. ——, or to the person or persons who, for the time being, shall carry on the business of that house, with instructions to insure the produce in each consignment, and to sell and dispose of the same produce; and upon further trust, and with directions,

them, not exceeding a certain amount, out of produce, in preference to interest and instalments, &c. &c.

out of the produce of such consignment, and after answering the duties, expenses of freight and sale, insurance, and commission, to answer and keep down the interest of the said sums of £—— and £——, or so much and such part thereof as from time to time shall remain due and unpaid, and to answer and pay the said sum of £——, and the instalments of the said sum of £——, at the times hereby appointed for payment thereof respectively; and that the surplus, if any, of such produce shall be payable and paid to the said A. B., his heirs, executors, administrators, or assigns. Provided always, and it shall or may be lawful to and for the said A. B., his heirs, executors, administrators, or assigns, to authorize or empower the said house or partnership of Messrs. ——, or the partners for the time being in that house, to retain, out of the produce of the said consignments, the interest of any sum not exceeding £——, and being part of any debt which the said A. B. doth or shall or may owe to the said Messrs. ——, or the partners for the time being in that house or business, such interest to be paid in preference to the instalment or instalments payable to the said C. D. and E. F. Provided also, and notwithstanding any of the provisions and declarations hereinbefore contained, the said sum of £——, and the interest thereof, shall be payable and applied as between the said C. D. and E. F. respectively, and their respective executors, administrators, and assigns, in manner following; (that is to say), one-half part of the same sum and interest shall belong to the said C. D., his executors, administrators, and assigns; and the interest of the other moiety or half part thereof shall belong to the said C. D. and his assigns during his life, and after his death the principal and future interest shall belong and be payable and paid to the said E. F., his executors, administrators, and assigns. Provided always, and if at any time during the continuance of the said sum of £—— and interest, or any part thereof, on this security, each or either of the said annuities of £—— and £—— shall be answered and paid by the said A. B., his heirs, executors, administrators, or assigns, the sum or sums to be so paid on account or in respect of the same annuity or annuities, shall or may be retained out of and deemed a part satisfaction of the instalment or instalments (if any) of the said sum of £—— then due, or

which shall be next in course of payment; And further, that in case each or either of the said annuities of £—— and £—— shall be subsisting on the —— day of —— in the year 18—, then and in that case so much and such part of the said sum of £——, residue of the said sum of £——, as will purchase so much 3 per cent. Consolidated Bank Annuities as will produce an income equal in amount to such subsisting annuity or annuities, shall be applied in the purchase of such annuities, in the names of two trustees, one to be named by the said A. B., his heirs or assigns, and the other to be named by the said C. D. and E. F., their executors, administrators, or assigns; or otherwise a competent sum, sufficient to produce an income equal to such annuity or annuities, shall be placed out in the names of two trustees to be nominated and appointed in like manner; and such 3 per cent. Consolidated Bank Annuities, or the securities on which such money shall be invested, shall be held in trust that the trustee or trustees thereof for the time being do and shall answer and pay the said annuities, or such of them as from time to time shall be subsisting, when and as the same annuity or annuities shall become payable; and subject thereto, the same annuities or securities shall be held in trust for the said C. D. and E. F., their executors, administrators, and assigns, subject nevertheless to the regulation and agreement hereinbefore contained for the division and apportionment of the said sum of £—— and the interest thereof; and that when one of the same annuities of £—— and £—— shall determine, then a proportionate or rateable part of the said 3 per cent. Consolidated Bank Annuities, or other securities, shall be exonerated and discharged of and from the trusts hereinbefore mentioned for answering and paying such annuity.

By mortgagor to convey and assign apprenticed labourers, &c. to be purchased from time to time, and being on plantation, subject to proviso

CV. Covenant, promise, and agree with and to the said C. D., his heirs, executors, administrators, and assigns, that he the said A. B., his heirs, executors, administrators, or assigns, at his or their own costs and charges, shall or will, from time to time, when thereunto requested by the said C. D., his executors, administrators, or assigns, convey, assign, and assure and effectually vest in the said E. F. and

of redemption, and reassignment on reduction of debt.

G. H. [*trustees*], their heirs, executors, administrators, and assigns, all the slaves or apprenticed labourers (*a*), cattle, implements, and stores which from time to time shall be purchased by or belong to the said A. B., his heirs, executors, administrators, or assigns, and be employed by him or them in or upon the said plantation, messuages, parcel of land, and other hereditaments hereby released and assigned by the said I. K. and L. his wife, and the said A. B. respectively as aforesaid; subject nevertheless to the provisoes or agreements for redemption hereinbefore contained; and so and in such manner that the slaves or apprenticed labourers, cattle, implements, and stores which for the time being, and from time to time, shall belong to the said plantation, messuages, and premises hereby released and assigned by the said A. B., or intended so to be, shall be subject to be re-conveyed and re-assigned to the said A. B., his heirs, executors, administrators, and assigns, when and as soon as the said debt of £—— shall be reduced to the sum of £—— as aforesaid.

(*a*) By the ever-memorable statute of the 3 & 4 Will. 4, c. 73, it was enacted, that on the 1st of August, 1834, *Slavery throughout the British colonies should be utterly abolished*, and that the existing slaves should thenceforth become "apprenticed labourers." These apprenticed labourers are divided into three distinct classes: the first consists of *prædial apprenticed labourers* attached to the soil, and comprises all persons who in their state of slavery were usually employed in agriculture, or in the manufacture of colonial produce or otherwise, upon lands belonging to their owners; the second consists of prædial apprenticed labourers not attached to the soil, and comprises all persons who in their state of slavery were usually employed in agriculture, or in the manufacture of colonial produce or otherwise, upon lands not belonging to their owners; and the third consists of *non-prædial apprenticed labourers*, and comprises all apprenticed labourers not included within either of the two preceding classes. The term of apprenticeship of prædial labourers is limited by the Act to the 1st of August, 1840; and of non-prædial labourers, to the 1st of August, 1838. The 10th section enacts that the right or interest of any employer to the services of any apprenticed labourers shall be transferable by bargain and sale, contract, deed, &c., according to the rules laid down in the Act, provided that no apprenticed labourer shall be subject to separation from wife or husband, parent or child, or from any one *reputed* to bear such relation.

By mortgagor, that if principal and interest be not paid within the year, he will not discharge or redeem the mortgage until a certain time, unless called upon by the mortgagees.

CVI. And the said A. B., party hereto, doth hereby, for himself, his heirs, executors, administrators, and assigns, further covenant, promise, and agree with and to the said C. D. and E. F., their executors, administrators, and assigns, that in case the said sum of £—— and interest shall not be paid on the —— day of —— next, the said A. B., party hereto, his heirs, executors, administrators, or assigns, shall not nor will pay to the said C. D. and E. F., their executors, administrators, or assigns, the said principal sum of £—— hereby secured, or any part thereof, before the said —— day of —— which will be in the year of our Lord 18—, or before the same day redeem, or by any means whatsoever endeavour to redeem the said several manors &c. hereby released or otherwise assured, or intended so to be, unless the said C. D. and E. F., their executors, administrators, or assigns, shall previously call in the said principal sum of £——, or demand payment thereof, or by some writing under their hands agree to accept payment thereof, or proceed at law or in equity to recover possession of or to foreclose the equity of redemption of the said several manors &c. hereby released or otherwise assured, or intended so to be; but that the said principal sum of £——, or so much thereof as shall not be called in or accepted by the said C. D. and E. F., their executors, administrators, or assigns as aforesaid, shall in the meantime, and until the said —— day of —— which will be in the year of our Lord 18—, remain and be charged upon, and be secured by and out of the said several manors &c. hereby released or otherwise assured, or intended so to be, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (*a*).

By mortgagee that mortgagor shall have the privilege of redeeming a prior mortgage.

CVII. And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said C. D. and E. F., their heirs, executors, administrators, and assigns, that he the said A. B., his heirs, executors, administrators, or assigns, shall not nor will, at any time during the continuance of this

(*a*) Vide Tit. IX. art. XXV.

security, unless with the approbation and consent of the said C. D. and E. F., their heirs, executors, administrators, or assigns (testified by some writing under their hands), join or concur in any redemption of the said hereinbefore in part recited mortgage of the &c., except by the said C. D. and E. F., their heirs, executors, administrators, or assigns; it being the express agreement of the said parties to these presents, that they the said C. D. and E. F., their heirs, executors, administrators, or assigns, shall have the sole and exclusive privilege of redeeming and discharging the said mortgage, if they shall think fit.

By mortgagee that leases granted by mortgagor shall be binding, and for confirmation of them (*a*).

CVIII. And further, that all leases which from time to time during the continuance of the said sums of £—— and £——, or either of them, on this present security, shall be granted by the said A. B. [*mortgagor*] or his assigns, of all or any of the said messuages &c., either on building, repairing, or improving leases, and without any premium or fine to be taken for granting the same leases respectively, shall be binding on the said C. D. [*mortgagee*], his heirs, executors, administrators, and assigns, and all persons claiming or to claim by, from, under, or in trust for him or them; and that the said C. D., his heirs, executors, administrators, or assigns, on the request and at the costs and charges of the said A. B., his heirs, executors, administrators, or assigns, or of such lessee or lessees, his, her, or their executors, administrators, or assigns, shall or will make, do and execute, or concur in all such acts, deeds, and assurances as shall be necessary to confirm or give effect to the same lease or leases as to and against the said C. D., his heirs, executors, administrators, and assigns.

(*a*) According to *Keech* v. *Hall*, Dougl. 21, Smith's Leading Cases, i. 293, which has since been frequently confirmed, the lease of a mortgagor, granted after the mortgage, and without the privity of the mortgagee, does not bind the latter; who accordingly may recover in ejectment against the tenant, without giving him notice to quit. When building land, therefore, is the subject of mortgage, it is often expedient to introduce into the mortgage a covenant by the mortgagee to join in granting building leases, &c., according to the Form above given; or a power of leasing may be reserved to the mortgagor. Vide Tit. IX. art. xxxii.

To insure against fire. (In mortgages).

CIX. And the said A. B. doth for himself, his heirs, executors, and administrators, further covenant, promise, and agree with and to the said C. D., his heirs, executors, administrators, and assigns, by these presents, that he the said A. B., his heirs, executors, or administrators, shall and will, during the continuance of the said sum of £——, or of any part thereof, on this security, at his own costs and charges, insure and keep insured from loss or damage by fire the messuages or tenements and buildings hereby appointed and released, or expressed and intended so to be, in the joint names of them the said A. B. and C. D., in no less a sum than £——, in the —— fire insurance office, or in some other good and reputable office for insuring buildings against loss or damage by fire; and that all and every the policy and policies of insurance of the said messuages or tenements and buildings shall stand and be a security or securities for the payment of the said sum of £—— hereby lent and advanced, and the interest thereof, jointly with these presents; and in case of any loss or damage by fire happening to the said messuages or tenements and buildings, that then the money or monies due or recoverable upon the said policy or policies of insurance shall be received by, or immediately on recovery thereof be paid to, the said C. D., his heirs, executors, administrators, and assigns, and be by him or them, so far as the same will extend, fully and faithfully applied, laid out, and expended in rebuilding, repairing, and reinstating the said messuages or tenements and buildings; and the messuages or tenements and buildings, when so rebuilt, repaired, and reinstated, shall stand and be a security for, and be charged and chargeable with the repayment of the said principal sum of £—— and interest to the said C. D., his executors, administrators, and assigns, in manner hereinbefore mentioned, according to the true intent and meaning of these presents.

By mortgagee to pay premiums on policy of insurance already effected; and in case of its becoming

CX. And the said A. B. doth for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, by these presents, that he the said A. B., his executors, administrators, and assigns, shall and will from

void, to effect a fresh one; with a declaration, that, in the event of the premises being burnt down or damaged, money to be received under the policy shall be laid out in rebuilding or repairing the premises.

time to time, and at all times during the continuance of the security intended to be hereby made, well and truly pay or cause to be paid to the said —— insurance company all such annual premium or premiums and duty, and sum and sums of money as shall grow due on the said instrument or policy of insurance, so as to keep the same on foot; and shall and will, whenever thereunto requested by the said C. D., her heirs or assigns, produce and shew forth to her or them the said instrument or policy of insurance, and the receipt for the premium and duty payable in respect thereof, yearly and every year until the repayment of the said sum of £—— and interest; and that in case the said A. B., his heirs, executors, administrators, and assigns, shall neglect or refuse to make any such payment or payments, it shall and may be lawful to and for the said C. D., her executors, administrators, or assigns, to pay such annual premium or premiums and duty, and sum and sums of money, so as to keep the said instrument or policy of insurance on foot; and in case the same shall at any time become void, or shall not continue on foot, then to insure or cause to be insured the said messuages, tenements, and premises, firstly and secondly hereinbefore granted and released, or expressed and intended so to be, in any office or offices for insuring houses from loss or damage by fire, in any sum or sums of money not exceeding the sum of £——, and so on from time to time, as and when such insurance or insurances shall cease; and to pay all the expenses of effecting such insurance or insurances, and all the annual premium or premiums and duty, and sum and sums of money which shall from time to time become payable for keeping such insurance or insurances on foot; And that the said A. B. shall and will from time to time, on demand, well and truly pay or cause to be paid unto the said C. D., her executors, administrators, or assigns, all and every sum and sums of money which shall be paid or advanced by the said C. D., her executors, administrators, or assigns, in or towards payment of any such premium or premiums, duty, sum or sums of money, or expenses, with interest for the same respectively after the rate of £5 per cent. per annum, from the time or respective times of paying or advancing the same; and that in the mean time, and until such sum or

sums of money shall be repaid with interest as aforesaid, the said messuages, hereditaments, and premises hereinbefore granted, released, and demised respectively, or expressed and intended so to be, shall stand and be charged therewith, and shall not be redeemed or redeemable until full payment thereof respectively. And it is hereby agreed and declared, that in case the said messuages, hereditaments, and premises so insured as aforesaid, or any of them, or any part thereof, shall at any time or times during the continuance of the said security be burnt down or destroyed or damaged by fire, then and in such case, and so often as the same shall happen, all such sum or sums of money as shall or may be recovered or received upon or by virtue of the aforesaid instrument or policy of insurance, or any other such insurance as aforesaid, shall be laid out and expended in the rebuilding or repairing of the said messuages, hereditaments, and premises, or such part thereof as shall be burnt down, destroyed, or damaged by fire as aforesaid, or be retained and applied in discharge of the monies due or to become due on the present security.

To assure life for the benefit of a mortgagee.

CXI. Covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that he the said A. B., his heirs, executors, or administrators, shall and will, within ten days next after the execution of these presents, at his or their own costs and charges, insure or cause to be insured in the office for equitable assurances on lives and survivorships, or in some other office for assurances on lives and survivorships, the sum of £—— on the life of the said A. B., during so long time as the said principal sum of £—— and interest, secured by the said bond of even date herewith, or any part thereof, shall remain due and unpaid; and that the policy or policies of assurance so to be obtained shall be made and executed to and taken in the name of the said C. D., or otherwise the same policy or policies, and all monies to become payable in respect thereof, shall be assigned to him the said C. D., his executors, administrators, and assigns, when and as soon as such policy or policies shall be obtained; and that he or they shall be interested in the same policy or policies, and all monies to become payable

by virtue thereof, In trust only for better securing the payment of the said sum of £—— and interest secured by the said bond of even date with these presents; and that he the said A. B., his heirs, executors, or administrators, shall or will from time to time well and truly pay or cause to be paid the premium or premiums to be reserved in and by the same policy or policies of assurance so to be obtained and assigned as aforesaid, at the days and times on which the same shall become due, and shall and will deliver the receipt or receipts for the same premium or premiums to the said C. D., his executors, administrators, or assigns, from time to time as the same shall be discharged.

To insure life in a certain sum, in case there shall be three children of a marriage; in a further sum, if four children; and in a further sum, if five; and to assign policies to trustees; but the covenantor not to be obliged to keep the same on foot in certain events; with proviso for enabling trustees to effect such assurances on failure of covenantor, and pay expenses out of trust estate. (In settlements).

CXII. Covenant, promise, and agree with and to the said C. D. and E. F., their executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said A. B. shall and will, in case and so often as there shall be three children of the said intended marriage exclusively of an eldest son for the time being entitled as aforesaid, at the request in writing of the trustees or trustee for the time being of these presents, but at the costs and charges of the said A. B., his executors or administrators, insure and keep insured his life in some one or more of the public offices in London or Westminster for effecting assurances on lives, in the sum of £—— at least; and shall and will, in case and as often as there shall be four children of the said intended marriage exclusively of an eldest son for the time being entitled as aforesaid, at the like request, costs, and charges, insure and keep insured his life as aforesaid in some one or more of the said public offices, in the further sum of £—— at least; and shall and will, in case and so often as there shall be five children of the said intended marriage exclusively of an eldest son for the time being entitled as aforesaid, at the like request, costs, and charges, insure and keep insured his life as aforesaid in the further sum of £—— at the least; and shall and will, at the like request, costs, and charges, transfer and assign all and every the policy and policies of assurance unto the trustees or trustee for the time being of these presents; and shall and will from time to time do or cause to be done all other acts,

deeds, matters, and things whatsoever, which shall be requisite or necessary for keeping the said policies on foot, and for enabling the said trustees or trustee to receive all sums of money, benefit, and advantage which shall or may accrue or grow due thereupon. Provided always, and it is hereby declared to be the true intent and meaning of the parties to these presents, that in case the children of the said intended marriage shall at any time be reduced below the number of five, exclusively of an eldest son for the time being entitled as aforesaid, by the death of any child who shall not have attained a vested interest in the said sum of £——, or the stocks, funds, or securities in or upon which the same shall for the time being be invested, then and so often as the same shall so happen, the said A. B. shall not be obliged or compellable to continue the said lastly hereinbefore mentioned policy of assurance for the sum of £—— on foot, but such last-mentioned policy, if any such shall have been effected, and all benefit thereof, shall thenceforth be in trust for the said A. B., his executors, administrators, and assigns; And in case the children of the said intended marriage shall at any time be reduced below the number of four, exclusively of an eldest son for the time being entitled as aforesaid, by the death of any child who shall not have attained a vested interest in the said sum of £——, or the stocks, funds, or securities in or upon which the same shall for the time being be invested, then, and so often as the same shall happen, the said A. B. shall not be obliged or compellable to continue the said secondly hereinbefore mentioned policy of assurance for the sum of £—— on foot, but such last-mentioned policy, if any such shall have been effected, and all benefit thereof, shall thenceforth be in trust for the said A. B., his executors, administrators, and assigns; And in case the children of the said intended marriage shall at any time be reduced below the number of three, exclusively of an eldest son for the time being entitled as aforesaid, by the death of any child who shall not then have attained a vested interest in the said sum of £——, or the stocks, funds, or securities in or upon which the same shall for the time being be invested, then, and so often as the same shall hap-

pen, the said A. B. shall not be obliged or compellable to continue the said firstly hereinbefore mentioned policy of assurance for the said sum of £—— on foot, but such last-mentioned policy, in case any such shall have been effected, and all benefit thereof, shall thenceforth be in trust for the said A. B., his executors, administrators, and assigns. Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that in case the said A. B. shall neglect or refuse to effect such several assurances as aforesaid, or to keep the same respectively on foot, then, and so often as the same shall happen, it shall and may be lawful to and for the trustees and trustee for the time being of these presents, either with or without the consent of the said A. B., out of the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities hereinbefore limited, in trust for the said A. B. and his assigns for his life, from time to time to pay all and every the sum and sums of money which shall be requisite and necessary for the purpose of effecting such assurances, and of keeping the same respectively on foot.

By receiver to collect and apply rents.

CXIII. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, and also (as a separate covenant) with and to the said E. F., his executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said A. B. shall and will from time to time, so long as he shall be and continue the collector and receiver of the rents, issues, and profits of the said messuages or tenements and premises, or any of them, in manner aforesaid, use his utmost endeavours faithfully to collect and receive the same; and that the said A. B. shall and will, during such time, and so long as he shall continue and be the collector and receiver of the same, truly and punctually apply or cause to be applied, in manner and to and for the ends, intents, and purposes aforesaid, all such sum and sums of money as shall from time to time be collected or received by him the said A. B., under the aforesaid power or authority.

Between mortgagor and mortgagee not to revoke the powers of receiver; and in case of death or disability, to appoint another; with a proviso for exempting mortgagee from liability for receiver's defaults, and subjecting mortgagor to losses.

CXIV. And each of them the said C. D. and E. F. doth for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the other of them, his executors, administrators, and assigns, by these presents, in manner following; (that is to say), that neither of them the said C. D. and E. F. shall, during the continuance of the securities made or intended to be made by the said hereinbefore in part recited indentures of the —— day of —— and the —— day of ——, without the consent of the other of them first had and obtained in writing signed with his or their hand or hands, revoke the powers and authorities hereby given to the said A. B., or any of them, or do or suffer to be done any act, matter, or thing whereby the said powers or authorities hereby given, or any of them, may and shall become void and of none effect; or hinder or obstruct him the said A. B., or any future receiver to be appointed as hereinafter is mentioned, in recovering, collecting, and receiving all or any of the rents, issues, and profits of the said messuages or tenements and other premises, upon and for the trusts and purposes aforesaid; And further, that in case the said A. B. shall, during the continuance of the said securities, by death or other disability, be disqualified or rendered incapable to collect and receive the rents and profits of the said messuages or tenements and other premises, or shall refuse or neglect to proceed therein in manner aforesaid, or shall otherwise misbehave himself in the trust hereby in him reposed, then and in every of the said cases each of them the said C. D. and E. F. will join with the other of them in removing the said A. B., if then living, from the said employment, and appointing and authorizing some other fit person or persons in the place of the said A. B., to collect and receive and pay the rents and profits of the said messuages or tenements and other premises, upon and for the trusts, intents, and purposes hereinbefore mentioned; and so from time to time and as often as the like case shall happen during the continuance of the said security. Provided always, and it is hereby agreed and declared, that the said E. F. [*mortgagee*], his executors or administrators, shall not in anywise be charged with or answerable for any loss or

misapplication of the rents, issues, and profits of the said messuages and tenements and other premises, or any part thereof, by reason of any default, neglect, or breach of trust in the said A. B., or any future agent or receiver so to be appointed as aforesaid; but that such loss, misapplication, or nonapplication shall be wholly borne by the said C. D. [*mortgagor*], his executors or administrators.

To pay rents and perform covenants, and when any of the lives drop, to renew in the names of the trustees, paying fine and expenses. (In settlements).

CXV. Covenant, promise, and agree with and to the said C. D. and E. F., their executors, administrators, and assigns, by these presents, in manner following; (that is to say), that he the said A. B. shall and will, from time to time during his life, well and truly pay the rents and perform the covenants in and by the said indenture of the &c., and by and in the renewed lease or leases of the said leasehold premises reserved and contained on the part of the tenant or lessee to be paid, observed, and performed; And also that he the said A. B. shall and will, from time to time during his life, when and so often as any of the lives in the said indenture of the &c., or in any renewed lease of the said leasehold premises, shall happen to die, use his utmost endeavours to procure a renewal of the then subsisting lease of the said leasehold premises in the names or name of the said C. D. and E. F., or the survivors of them, or the heirs or assigns of such survivor, for and during the life or lives then in being, and the life or lives of some other person or persons; so that the said leasehold premises may, during the time aforesaid, as far as the nature and the circumstances of the case will admit, be held by the said C. D. and E. F., or the survivor of them, or the heirs or assigns of such survivor, by virtue of or under every such renewed lease, for the lives of three persons then in being, and the life of the longest liver of them, under and subject to such and the like rents and covenants as are in and by the said indenture of the &c. reserved and contained; and the said A. B. shall and will pay the fines for every such renewed lease, and all costs, charges, and expenses relating thereto (*a*).

(*a*) Add power that trustees may, during the life of the covenantor, (if he neglect), renew the lease, raise money for the fines and expenses, and

CXVI. Covenant, promise, and agree to and with the said C. D. and E. F., their executors, administrators, and assigns, in manner following; (that is to say), that in case any or either of the said persons on or for whose lives the said respective premises now are or shall be held, shall happen to die before the said sum of £—— and the interest thereof shall be fully paid off and discharged, he the said A. B., his executors, administrators, and assigns, shall and will, from time to time and at all times within one calendar month next after the death of each and every such person being a life, at his and their own proper costs and charges, purchase and take a new lease or new leases of the said premises from the owner or respective owners of the fee thereof, (if he or they will consent to grant the same), with the addition of such other person or persons, in the room or stead of the person or persons so dying, as shall from time to time be nominated or approved of by the said C. D. and E. F., their executors, administrators, and assigns; and shall and will from time to time, immediately after taking such last-mentioned new lease or leases, at his and their like costs and charges, assign over such new lease or leases respectively to be purchased and taken in manner aforesaid, and all the estate, term, and interest of him the said A. B., his executors or administrators, of, in, or under the same respectively, unto the said C. D. and E. F., their executors, administrators, or assigns, for the better securing the payment unto him or them of the said sum of £—— and the interest thereof. Provided always, and it is hereby covenanted, declared, and agreed by and between the said parties to these presents, that in case the said A. B., his executors or administrators, shall at any time or times hereafter neglect or refuse to purchase or take a new lease or new leases of the said premises within the times and in manner before mentioned, then and in such case it shall and may be lawful to and for the said C. D. and E. F., their executors, administrators, or assigns, to surrender the said several recited indentures of lease hereinbefore assigned, and also

By mortgagor to renew, and assign renewed leases to mortgagees, with provision, in case of mortgagor's neglect, for mortgagees to surrender leases and take others in their own names.

surrender, vide Tit. VIII. art. cxv. p. 505. Also, a declaration of trust of such renewed lease. Vide Tit. VII. COMMON FORMS, art. cxvii. p. 319.

such other lease or leases as shall be taken and renewed in the said premises, and from time to time to renew, purchase, and take a new lease or new leases of the said premises respectively in his or their own name or names, either for a term or terms of years absolute, or determinable on the death of one or more life or lives, or to take a new lease or new leases of the same premises in reversion, determinable on the life or lives of such person or persons as he or they shall think proper to nominate and add; and that the said C. D. and E. F., their executors, administrators, or assigns, shall not be compelled or compellable, either in law or in equity, to assign his or their estate, term, and interest in the said premises by virtue of and under this present assignment, or by virtue of and under such renewed lease or leases, until payment and satisfaction to them, not only of the said principal sum of £—— and all interest thereof, but also of the fine and fines paid for such renewal and renewals, and all costs, charges, and expenses relating thereto, with lawful interest for the same respectively (*a*).

Another form.

CXVII. And the said A. B. doth for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that he the said A. B., his heirs, executors, administrators, and assigns, shall and will, from time to time and at all times hereafter during the continuance of the security intended to be hereby made, when and as often as either of them the said E. F., G. H., and I. K., or any future cestui que vie or cestuis que vie to be substituted in their or either or any of their room, or in the room of any future cestui que vie or cestuis que vie, shall die, or the usual course of renewal shall require, use his utmost endeavours to procure a renewed lease of the premises comprised in the said hereinbefore in part recited lease of the &c., and in the name or names of the said C. D., his executors, administrators,

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(*a*) Here insert a provision, as in the next Form, limiting the amount of fines and expenses to be paid by the mortgagee, so that the ad valorem duty may be paid on the aggregate sum.

or assigns, for the term of ninety-nine years from the time of such renewal, determinable on the decease of the survivor of not less than three cestuis que vie, so that the premises comprised in the said hereinbefore in part recited lease of &c., may, during the continuance of the security intended to be hereby made, as far as the matter and circumstances of the case will admit of, be never held for any less term than a term of —— years determinable on the decease of the survivor of not less than three cestuis que vie; and may remain under and subject to such and the like rents, covenants, agreements, and provisoes as the same are now subject to respectively by virtue of the said hereinbefore in part recited indenture of the &c.; And that he the said A. B., his executors, administrators, and assigns, shall and will pay the fine for every such renewed lease, and all costs, charges, and expenses relating thereto; And further, that if the said A. B., his executors, administrators, or assigns, shall neglect or refuse to renew as aforesaid, or to pay the fines, fees, and other charges and expenses incident to and payable upon such renewal, then and so often as it shall so happen, it shall and may be lawful to and for the said C. D., his executors, administrators, and assigns, when and so often as any one or more of the said present or future cestuis que vie shall die, or the usual course of renewal shall require, to renew such lease as aforesaid in their or his own proper names or name, or in the names or name of such other person or persons as he or they shall appoint, to be held by him or them upon the trusts and in manner aforesaid; and also, that he the said A. B., his executors or administrators, shall and will on demand well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, all such fines, fees, and other charges and expenses as shall and may from time to time be incurred upon every or any such renewal as last aforesaid, with interest for the same after the rate of £5 for every £100 by the year, from the time or respective times of advancing the same; and that the fines, fees, and other expenses, and the interest thereon, after the rate and from the time aforesaid, shall, in default of such payment thereof, stand in the same place as the said principal sum of £——, and be secured by such and the same

securities, and be recoverable by such and the same ways and means. Provided always, that the fines, fees, and expenses for procuring such new lease shall not be charged on the said premises to any greater amount than £——, so as not, with the said £——, to exceed the sum of £——.

Another form.

CXVIII. Covenant and declare, to and with the said A. B., his executors, administrators, and assigns, and the said A. B. doth hereby consent and agree, that from time to time, when and as often as any one of the lives on which the said rectory, tithes, hereditaments, and premises comprised in the said hereinbefore in part recited indenture of lease, bearing date the &c., are, and from time to time during the continuance of the said sum of £—— or any part thereof on this security, shall be held, shall depart this life; and also from time to time, at the usual and customary times of renewing the lease granted by the said hereinbefore recited indenture, bearing date the &c., or any renewed lease of the same premises, the said C. D., his heirs, executors, administrators, and assigns, and also the said A. B., his heirs, executors, administrators, and assigns, shall do all such acts, and make all such surrenders, and the said C. D., his heirs, executors, administrators, or assigns, shall pay all such fines, fees, and expenses as shall be payable for the purpose of obtaining a new or further lease of the premises respectively, according to the usual and customary mode of granting such renewals; and that if the said C. D., his heirs, executors, administrators, and assigns, shall neglect to make such renewals, it shall or may be lawful to and for the said A. B., his heirs, executors, administrators, or assigns, to make the same, and to pay the fines, fees, and expenses of such renewal; and that the same fines, fees, and expenses, not exceeding in the whole, together with and including the said sum of £——, the sum of £——, shall be deemed principal monies, and shall, from the respective times of paying the same, respectively bear interest at the rate of £5 per cent. per annum; and the same principal monies, not exceeding in the whole the sum of £—— and interest, shall be charged and chargeable upon the freehold and copyhold hereditaments and premises respectively hereby re-

leased, assigned, and assured to or to the use of the said A. B., his heirs, executors, administrators, and assigns as aforesaid, and that the same hereditaments and premises shall not be redeemed or redeemable at law or in equity, until as well the same fines, fees, and expenses, not exceeding the sum of £—— as aforesaid, and interest thereon at the rate aforesaid, as the said sum of £—— and the interest thereof, at the rate aforesaid, shall be fully paid and satisfied; and that when and as soon and as often as any such renewal shall be obtained, the estate or estates to be granted by any new or renewed lease shall from time to time, at the costs and charges of the said C. D., his heirs, executors, administrators, or assigns, be assigned, released, or settled so and in such manner that the said A. B., his heirs, executors, administrators, and assigns, may have the same or the like estate and interest in the premises respectively, as are hereby granted to him and them in the premises respectively, or as near thereto as may be, or the circumstances of the case will admit; subject, nevertheless, to the proviso or agreement for redemption hereinafter continued.

To obtain renewed lease, with a license to demise; and thereupon to demise the same to mortgagee upon the trusts of original lease, and to pay fines. (Short form).

CXIX. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that he the said A. B., his executors, administrators, and assigns, shall and will, within the space of twelve calendar months from the day of the date of these presents, in case the said sum of £——, or any part thereof, shall continue on this security, use his utmost endeavours to procure a renewed lease of the premises comprised in the said hereinbefore in part recited lease of the &c., together with a license to demise the same; and shall and will, when and so soon as such renewed lease and license shall be obtained, forthwith demise and lease the same, and all the estate and interest of the said A. B. therein, unto the said C. D., his executors, administrators, and assigns, upon such and the like trusts, and for such and the like intents and purposes as are hereinbefore expressed and declared of and concerning the said hereinbefore recited lease of the &c.; and that he the said A. B., his executors,

administrators, and assigns, shall and will pay all fines and dues to be paid in or about the obtaining of such renewal.

By grantee of annuity that grantor shall be at liberty to repurchase after a certain time, upon giving six months' notice; and he will in that event release and assign the premises.

CXX. Covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that in case the said C. D., or his assigns, shall be minded or desirous of repurchasing the said annuity or yearly rent or sum of £——, at any time after the expiration of three years, to be computed from the day of the date of these presents, and of such his intention shall give six calendar months' previous notice in writing to the said A. B., his executors, administrators, or assigns, or leave the same at his or their usual place or places of abode, then and in such case he the said A. B. shall and will, upon the expiration of such notice, and on receiving from the said A. B., or his assigns, all and every sum and sums of money whatsoever which shall then be due for or on account of the said annuity, yearly rent, or sum of £——, and a proportionate part thereof up to the day of repurchasing the same, and all sums of money (if any) which shall then be due for or on account of any costs, charges, and expenses occasioned by the nonpayment thereof, accept and take the sum of £—— as and in full for the repurchase of the said annuity or yearly rent or sum of £—— hereinbefore granted as aforesaid; and on receipt of the said sum of £——, and all arrears of the said annuity or yearly rent or sum of £——, and such proportionate part thereof as aforesaid, and all costs as aforesaid, he the said A. B. and said E. F., their executors, administrators, or assigns, shall and will thereupon, at the request and at the proper costs and charges of the said C. D., or his assigns, release, assign, or otherwise dispose of the said annuity or yearly rent or sum of £——, and the said hereditaments and premises, and all other the securities hereby given for the same respectively, unto the said C. D., or unto such other person or persons as he or they shall in that behalf nominate or appoint; and do or cause to be done every other act, deed, matter, or thing which shall be necessary for the releasing, assigning, vacating, or discharging the said annuity, yearly rent, or sum of £—— (as the case may be or require), and the several securities given for securing and

enforcing the payment thereof as aforesaid, as by the said C. D., or his assigns, or his or their counsel in the law, shall be reasonably advised or devised or required.

By father and son to pay annuity (after the death of the son) during the joint lives of certain persons. (In settlements).

CXXI. Covenant, promise, and agree with and to the said A. B. and C. D., their executors, administrators, and assigns, by these presents, that in case the said E. F. the son shall depart this life during the joint lives of the said G. H. and I. K., then and in such case he the said E. F. the father, his heirs, executors, or administrators, or the heirs, executors, or administrators of the said E. F. the son, shall and will yearly and every year during the joint lives of the said G. H. and I. K. well and truly pay or cause to be paid to the said L. M., or her assigns, one annuity or clear yearly sum of £—— of lawful money of Great Britain, free and clear of and from all deductions or abatements whatsoever, by four even and equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first quarterly payment of the said annuity to be made on such of the said days of payment as shall first and next happen after the decease of the said E. F. the son, if the said G. H. and I. K. shall be then living.

By intended husband, that during joint lives of intended wife and her mother, he will not reduce wife's unsettled property into possession.

CXXII. Covenant and agree with the said A. B. and C. D. [*trustees*], their executors, administrators, and assigns, that he the said E. F. shall not nor will, at any time or times during the joint lives of the said G. F. and I. K., make, do, or execute, or cause or procure to be made, done, or executed, any act, deed, assignment, matter, or thing whatsoever, whereby, or by reason or means whereof, all or any of the monies, property, and effects to which the said I. K. is entitled under the will of the said G. H., (expectant as aforesaid), and which are not included in the settlement hereby made, may be or be deemed or taken to be reduced into the actual possession of the said E. F., either at law or in equity.

For payment of annuity; such covenant to be an auxiliary security only.

CXXIII. And the said C. B. doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said E. F. and G. H., their executors and adminis-

trators, that the heirs, executors, administrators, or assigns of him the said C. B. shall or will from time to time, from and after the death of the said C. B., and thenceforth during the natural life of the said A. B., well and truly answer and pay, or cause to be answered and paid to the said A. B., or her assigns, the said annuity or yearly rent-charge of £——, or, as the event shall happen, £—— a year respectively, reducible as aforesaid, on the days or at the times hereinbefore appointed for payment thereof respectively; But this covenant is to be and to be deemed only an auxiliary and not a primary security for the payment of the said annuity or yearly rent-charge of £——, or, as the event shall happen, £—— respectively, reducible as aforesaid. (Vide Tit. IX. art. cxvii.)

That grantor shall have the option of repurchasing rent-charge, either in one sum or in several; and that, on such repurchase, the whole or part of the land shall be discharged therefrom: if part only purchased, then to have the option of exonerating lands released from a just proportion of the residue of rent.

CXXIV. Covenant and agree with the said E. F. and G. H., their heirs and assigns, that they the said E. F. and G. H., their heirs and assigns, shall be at liberty and have the option of repurchasing the said rent of £——, either in one entire sum, or in several sums, not less than £—— in any one purchase, at any time before the said —— day of ——; and when and as soon as any such purchase shall be made, to have any part, not exceeding a just proportion, according to the then value of the said messuages or dwelling-houses, plot of land, and hereditaments, or any messuages or dwelling-houses to be erected thereon, exonerated of and from the same rent-charge; and that when and as soon as the full amount of the said yearly rent-charge of £—— shall be repurchased, the said rent-charge shall cease and be void to all intents and purposes whatsoever; And further, that from time to time, when and as often as any part or parts of the said rent-charge shall be repurchased, such part or parts as the said E. F. and G. H., their heirs or assigns, shall think fit of the said messuages &c. hereby released or otherwise assured, or intended so to be, not exceeding a just proportion thereof as aforesaid, shall be exonerated and discharged of and from the residue of the said rent-charge; and so much of the same rent-charge as from time to time shall be existing shall be charged and chargeable only on the residue of the said messuages &c.; and that on the request, and at the

costs and charges of the said E. F. and G. H., their heirs or assigns, they the said A. B. and C. D., their heirs or assigns, shall or will release and discharge of and from the said rent-charge of £——, or so much thereof as shall be then subsisting, such part or parts of the said messuages &c., as, by virtue of and pursuant to the agreement hereinbefore contained, are to be exonerated of and from the same rent-charge, or the residue thereof, which shall be subsisting from time to time; and that the residue of the same rent-charge shall, notwithstanding such release, continue as an existing charge on the residue of the said messuages, &c. hereby charged with the same rent-charge.

That residue of hereditaments not conveyed shall be charged with rent in exoneration of land conveyed.

CXXV. And the said A. B., by way of agreement and not of release, doth hereby grant and agree to and with the said C. D., his heirs and assigns; and the said E. F. and G. H. do hereby severally consent, direct, and appoint that the said rent of £—— a year shall henceforth be answered and paid out of the residue of the hereditaments charged with the same exclusively, and by way of exoneration of the close of land, tithes, and hereditaments hereby released or otherwise assured, or intended so to be.

By jointress not to distrain on certain part of the estate charged with jointure, sold free from incumbrances. (Short form).

CXXVI. And the said A. B. [*jointress*], at the request and by the direction of the said C. D. [*vendor*], testified by his being a party to and executing these presents, doth for herself, her heirs, executors, administrators, and assigns, covenant and agree with the said E. F. [*purchaser*], his heirs and assigns, that she the said A. B. shall not, nor will at any time hereafter, distrain upon or otherwise resort to the said hereditaments comprised in the said indenture of the &c., or any part thereof, for enforcing or compelling the payment of or for securing the said annual rent-charge of £—— so limited to her as hereinbefore is mentioned (*a*).

Not to claim jointure out of part of lands;

CXXVII. Covenant, grant, declare, and agree to and with the said C. D., his heirs and assigns, in trust for the

(*a*) Vide Tit. I. art. viii. note, pp. 47—49.

and if claimed, such shall be released therefrom, with a proviso that residue of lands shall remain subject to the jointure.

said E. F., his heirs and assigns in manner following; (that is to say), that she the said A. B., her executors, administrators, and assigns, or any of them, shall not nor will, at any time or times hereafter, claim or demand the payment of the said jointure or rent-charge of £—— a year, or any part thereof, out of the said lands, tenements, and hereditaments hereby assigned and surrendered or otherwise assured, or intended so to be; and that in case she the said A. B., her executors, administrators, or assigns, or any or either of them, shall at any time or times hereafter claim or demand the said jointure of £—— a year, or any part thereof, out of the same lands, tenements, and hereditaments, or any of them, contrary to the true intent and meaning of these presents, then and in that case, and from that time, the said C. D., his heirs and assigns, and the said lands, tenements, and hereditaments hereby assigned and surrendered or otherwise assured, or intended so to be, and every part thereof, shall be released, exonerated, and discharged of and from the payment of the said rent-charge of £—— a year, and every part thereof, and all powers of distress and entry for recovering and enforcing the payment of the same annuity or rent-charge and arrears thereof. Provided always, and it is hereby declared and agreed by and between all the said parties to these presents, as far as they are respectively interested, that the residue of the manors, messuages, lands, tenements, and hereditaments charged and chargeable with the said jointure rent-charge of £—— a year, and the payment of such part of the said sums of £—— as has not already been raised and satisfied, shall remain subject and liable to the payment thereof respectively, in the same manner as if these presents had not been executed, or as near thereto as may be, and the circumstances of the case will admit.

Direction and appointment by request to a trustee, and covenant by the trustee to stand possessed of premises for residue of a

CXXVIII. And it is hereby declared and agreed by and between the parties to these presents, and the said A. B. and C. D. do hereby severally direct and appoint, and the said E. F. [*trustee*], at the instance and request of the said A. B. and C. D., testified by their executing these presents, doth hereby, for himself, his heirs, executors, and administrators,

covenant and agree with the said G. H., his heirs and assigns, that he the said E. F., his executors, administrators, and assigns, shall and will, immediately after the execution of these presents, and from time to time, stand and be possessed of, and interested in, and entitled to the said hereditaments comprised in the said term of one thousand years, and every part and parcel of the same, with the appurtenances, for all the residue of the said term of one thousand years therein, according to the nature and to the extent of the right and title of the said E. F. to that term, but no further or otherwise, upon trust to indemnify the said G. H., his heirs and assigns, and the messuages, farms, lands, and hereditaments so agreed to be purchased by him as aforesaid, of and from the payment of the said annuity of £——, and the arrears thereof, and all contributions towards the same; and subject thereto, upon such and the like trusts as he now holds the same term. Provided always, and it is hereby agreed and declared by and between the parties to these presents, that nothing in these presents contained shall extend, or be construed to extend, to affect the right of the said E. F., his heirs, executors, administrators, or assigns, or the owner or owners for the time being of the hereditaments and premises which were purchased by and conveyed to him as is hereinbefore mentioned or referred to, to retain, if necessary, his or their priority and preference in point of indemnity of and from the said annuity of £——, and the arrears thereof.

term to the extent of the right of another, upon trust, to indemnify others, and their heirs, and the premises from payment of an annuity, with a reservation of trustee's prior privilege of indemnity.

CXXIX. Covenant, promise, and agree with the said A. B. and C. D., [*trustees*], their executors, administrators, and assigns, that if the said intended marriage shall be duly solemnized, the said E. F. [*wife*], or the trustee or trustees for the time being of these presents, shall within six calendar months next after the decease of the survivor of the said G. H. [*father*], and A. his present wife, receive or be entitled to receive, either under or by virtue of the last will and testament of him the said G. H. or otherwise, as an additional portion or fortune to the said E. F., from the said G. H., pursuant to the agreement hereinbefore recited, such sum or sums of money as, together with and inclusive of the

By wife's father, to leave her a sum which, with other monies she is entitled to, shall amount to a specified sum.

sum or sums of money, stocks, funds, and securities, or the value thereof, which the said E. F. is entitled to under the said in part recited indenture of settlement, and also inclusive of any legacy duty which may be payable in respect of the first-mentioned sum or sums of money, shall amount to £—— at the least.

That all the property to which intended wife may become entitled during coverture, shall be for her separate use. (In settlements).

CXXX. Covenant and agree with the said A. B., his executors and administrators, that in case the said intended marriage shall be solemnized, and any property, real, personal, or mixed, shall at any time during the said intended coverture be given or bequeathed to or in any manner howsoever vest in the said C. D., then and in that case he the said E. F., as far as he lawfully may or can, shall and will, either alone or in concurrence with the said C. D., and at the costs and charges of such property, do all such acts whatsoever as shall be necessary or proper for settling the same property, for all the estate and interest of the said C. D., or of the said E. F., as her husband, therein; so and in such manner (*a*) that the said C. D. may have the sole

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(*a*) When the property is to be settled according to certain trusts previously declared,—

"that the same estate and property may, according to the respective nature and tenure thereof, be held and enjoyed upon and for such uses, trusts, ends, intents, and purposes as will correspond to the trusts, ends, intents, and purposes which are hereby declared and expressed concerning the said sum of £—— Bank Annuities, and the dividends, interest, and income thereof, or such and so many of them as shall be then subsisting or capable of taking effect, and be subject to the same or the like powers, provisoes, declarations, and agreements (including the proviso for determining the life interest of the said E. F. in the event of his bankruptcy or insolvency) as are hereinbefore contained concerning the same Bank Annuities, and the dividends, interest, and income therof, or as near thereto as may be, and as the nature or tenure of the property, and the rules of law and equity will permit, and with the same or the like power of leasing as to any

power of disposition over the same, notwithstanding her coverture; and so and in such manner, that in the meantime, and until such disposition shall be made, the same property, and the rents, profits, dividends, interest, income, and produce thereof, may belong to or be held in trust for the said C. D., for her sole and separate use notwithstanding her coverture; and also that in the meantime, and until such settlement shall be made, he the said E. F., as far as he may be interested in any such property, shall stand and be seised or possessed of and interested in the same, upon trust for the sole and separate use of the said C. D., his intended wife.

That wife, if survivor, may purchase husband's residence at a sum named.

CXXXI. And further, that in case the said A. B. shall survive the said C. D., and the said C. D. shall not have previously sold or disposed of the messuage &c. now occupied by the said C. D., and situate &c., the said A. B. shall and may (if she shall be desirous so to do, and shall notify such desire in writing within —— calendar months &c.) become the purchaser of the same messuage &c., and the fee-simple and inheritance thereof, of and from the heir or heirs, de-

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real estate which shall be so settled as is hereinbefore contained with respect to the messuages &c. to be purchased with the produce of the said Bank Annuities hereby settled, pursuant to the power in that behalf hereinbefore contained; And that in every such settlement of any real estate of freehold tenure there shall also be inserted proper remainders to the said trustees or trustee for the time being, in trust to support the contingent interests (if any) to be hereby limited; and until such settlement shall be made, the same property, and the rents, profits, dividends, interest, income, and produce thereof, shall belong to and be held by, and that the said E. F., as far as he may be interested in any such property, shall stand and be seised or possessed of and interested in the same, Upon trust for the same persons as would respectively be entitled thereto, and for the same ends, intents, and purposes, as if the same was or were actually settled as aforesaid."

visee or devisees of him the said C. D., at or for the price or sum of £——; and that the said heir or heirs, devisee or devisees, shall, upon receipt of the said sum, convey and assure the same hereditaments unto the said A. B., her heirs or assigns, or otherwise as she shall direct, free from all incumbrances.

By intended husband, that his executors shall pay a sum to the trustees, to be held by them upon certain trusts, within a given period after his decease.

CXXXII. Covenant and agree with said A. B. and C. D., their executors and administrators, that (*a*) the heirs, executors, or administrators of said E. F. shall or will, within (*b*) one calendar month next after his decease, well and truly pay or cause to paid unto the then trustee or trustees of this settlement, the sum of £—— of lawful money of Great Britain, to be by him or them laid out and invested at interest, in like manner and under the like restrictions as the said trust monies are to be invested, or as near thereto as may be, and circumstances will admit; and to the intent that the said sum of £——, and the stocks, funds, or securities in or upon which the same shall be invested, shall be held by the trustee or trustees for the time being, Upon trust that the said trustee or trustees for the time being do and shall, from time to time, during the natural life of said G. H. [*intended wife*], pay, apply, and dispose of the dividends, interest, and income of the said sum of £——, and of the stocks, funds, and securities in or upon which the same shall from time to time be invested, unto the said G. H. and her assigns, or otherwise permit and suffer her and them to receive and take the same to and for her and their own use and benefit; and from and after the decease of the said G. H., and in the meantime subject to her life interest, do and shall stand and be possessed of the same

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(*a*) Or,—

"if the said intended marriage shall be duly solemnized."

(*b*) Or,—

"—— years next after the solemnization of the said intended marriage."

sum of £——, and the stocks, funds, and securities in or upon which the same shall be invested, and the dividends, interest, and income thereof, upon the same or the like trusts, and for the same or the like ends, intents, and purposes, and under and subject to the same or the like powers, provisoes, declarations, regulations, and agreements (*a*), (including the provision for maintenance and advancement), as are hereinbefore expressed and declared of and concerning the said Bank Annuities, trust monies, and property of the said G. H., in the event that said E. F. her intended husband shall survive her, or of a part thereof in the event that the said G. H. shall survive her said intended husband, or as near thereto as may be, and the circumstances of the case will admit; and so that in the event of such failure as aforesaid of issue of the said intended marriage, the said sum of £——, or the stocks, funds, and securities in or upon which the same shall from time to time be invested, may belong to the survivor of them said E. F. and G. H. his intended wife, his or her executors, administrators, or assigns.

To pay legacies and mortgage money, and procure assignment of term. (In settlement of freeholds, subject to legacies and mortgage).

CXXXIII. Covenant and agree with the said A. B. and C. D., their executors, administrators, and assigns, that he the said E. F., his heirs, executors, or administrators, shall or will pay or cause to be paid with his own monies to the said several legatees named in the said recited will of the said G. H., the several legacies remaining unpaid to them respectively, as and when the same shall respectively become due and payable, together with all interest due and to become due for or in respect of the same legacies; and also shall or will well and truly pay the said principal sum of £——, and all interest due and to become due for the same, within twelve calendar months from &c.; and also, at the proper costs and charges of him the said E. F., his heirs,

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(*a*) Or,—

"except the proviso for determining the life interest of the said E. F. in the event of his bankruptcy or insolvency."

executors, or administrators, procure the said term of one thousand years to be assigned to some person or persons of the nomination of the said A. B. and C. D., or the survivor of them, his heirs, executors, administrators, or assigns, upon trust to attend and be subservient to the freehold, reversion, and inheritance of the hereditaments comprised in the same term, and hereby granted and released or otherwise assured, or intended so to be, as the same freehold, reversion, and inheritance are settled and assured by these presents.

To discharge money land from the trusts declared thereof, or to cause the money to be invested in the purchase of lands, and to convert the same, by means of sale, into money.

CXXXIV. Covenant with the said A. B. and C. D., their executors and administrators, that they the said E. F., G. H., and I. K. respectively, and their respective heirs and issue, shall and will forthwith, or as soon as conveniently may be, at the costs and charges of the said fourth part or share of the said G. H. of and in said sum of £——, or the lands to be purchased therewith, make, do, and execute, and concur in all acts and deeds, matters and proceedings whatsoever, which shall be necessary, proper, or expedient for discharging the said fourth part or share of the said G. H. of and in the said sum of £—— of and from all the trusts to which the same fourth part or share of the said sum of £—— is now liable, and for the purpose of procuring the said fourth part or share of the said G. H. of and in the said sum of £—— to be paid to the said A. B. and C. D., or the survivor of them, his executors or administrators, upon the trusts, and for the ends, intents, and purposes, and under and subject to the provisoes, declarations, and agreements hereinafter expressed and declared concerning the same; And further, that in case the said fourth part or share of the said G. H. of and in the said sum of £—— cannot be effectually discharged of and from the trusts to which that sum, or the share thereof belonging to the said G. H., is now subject, without being invested in the purchase of lands and hereditaments, then they the said E. F., G. H., and I. K. respectively, and their respective heirs and issue, shall or will forthwith, or as soon as conveniently may be, at the costs and charges of the trust estate, consent and concur in

all lawful and reasonable acts and deeds which shall be necessary or proper for procuring the said sum of £—— to be laid out and invested in the purchase of freehold manors &c. in England, to be settled pursuant to the trusts or directions declared by or contained in the said hereinbefore in part recited indenture bearing date on or about the &c., of and concerning the manors &c. which should be purchased with the produce of the said several sums of £—— and £——; and immediately afterwards, or as soon as conveniently may be, shall or will, by means of such good and sufficient assurances as by the said A. B. and C. D., or the survivor of them, his executors or administrators, shall be reasonably devised or advised and required, convey and assure the fourth part or share of the said G. H. of and in the manors &c. to be purchased with the said sum of £—— as aforesaid, either unto the said A. B. and C. D., or the survivor of them, or his heirs, or unto such person or persons as the said A. B. and C. D., or the survivor of them, his executors or administrators, shall direct or appoint.

To pay trustees such a sum as, with what will arise from sale of hereditaments, will make up the amount directed to be raised. (In settlements).

CXXXV. Covenant, promise, and agree with and to the said E. E. and A. B., their executors, administrators, and assigns, by these presents, that in case the said E. E. and A. B., or the survivor of them, or the heirs or assigns of such survivor, shall not, after full payment and satisfaction of the aforesaid sum of £—— and interest, and subject to the said annuity of £——, be able to raise by sale of the said freehold and copyhold hereditaments the whole of the said sum of £—— and interest hereinbefore directed to be raised as aforesaid, then and in such case he the said S. E. the father, his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid to the said E. E. and A. B., or the survivor of them, or the heirs or assigns of such survivor, such a sum of money as, together with the sum of money they or he shall (subject nevertheless as aforesaid) be able to raise by sale, mortgage, or other disposition of the said freehold and copyhold hereditaments, will amount to the sum of £—— and interest hereinbefore directed to be raised as aforesaid.

For production of title deeds (a)

CXXXVI. Covenant, promise, and agree (b) with and to the said A. B., his heirs and assigns, by these presents, that

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Lien of covenant by two severally for the production of deeds in different schedules.

(a) "And the said A. B. doth hereby for himself, his heirs, executors, and administrators, and as to and as far only as concerns the deeds, papers, or writings mentioned or specified in the first schedule hereunder written or hereunto annexed, and the acts, deeds, and defaults relating thereto; and the said C. D. doth hereby for himself, his heirs, executors, and administrators, and as to and as far only as concerns the deeds, papers, or writings mentioned or specified in the second schedule hereunder written or hereunto annexed, and the acts, deeds, and defaults relating thereto."

(b) When some of the deeds are lost or mislaid, introduce the covenant by the following recitals:—

"And whereas the deeds, papers, and writings enumerated in the first schedule hereunder written or hereunto annexed, are now in the custody or possession of the said A. B.; and the deeds, papers, and writings enumerated in the second schedule hereunder written or hereunto annexed, have been lost or mislaid, and cannot now be found; and whereas all the deeds, papers, and writings enumerated in the said two several schedules relate to or concern the said messuages &c. jointly and together with other property of the said A. B., which is of greater value than the said messuage &c. mentioned in the recitals hereinbefore contained; and on that account the deeds, papers, and writings comprised in the said first schedule to these presents, and also the deeds, evidence, and writings comprised in the said second schedule to these presents, when found, are to remain in the custody, possession, or power of the said A. B., subject to the covenant hereinafter contained for the production of the same deeds, evidence, and writings."

The vendor ought to covenant in the usual way, that he shall and will—

"as to, for, and concerning the deeds, papers, and writings comprised in the first schedule to these presents, at any time or times, and from time to time hereafter; and as to, for, and concerning the deeds, papers, and writings comprised in the second schedule to these presents, at any time or times and

he the said C. D., his heirs and assigns, shall and will, from time to time and at all times hereafter, upon every reasonable request and notice thereof in writing, for that purpose given to him or them by the said A. B., his heirs or assigns, or any person or persons lawfully or equitably claiming or to claim any estate, right, title, or interest of, in, to, from, or out of the said messuage and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or any part or parts thereof, at the costs and charges of the person or persons requiring the same, produce and shew forth, or cause and procure to be produced and shewn forth to him, them, or any of them, or to such person or persons as he or they or any of them shall desire or require, or at any trial or hearing in any court of law or equity or other judicature, or in the execution of any commission, or elsewhere, as occasion shall require, all or any of the several deeds or instruments which are specified in the list or particular annexed by way of schedule to these presents, for the manifestation, defence, and support of the estate, title, and possession of the said A. B., his heirs and assigns, and all and every other persons and person so claiming or to claim as aforesaid; and shall and will permit a copy or copies of the same, or any of them respectively, to be taken, at the expense of the person or persons so requiring the same respectively; and shall and will, in the meantime, keep the same in his or their custody uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident (*a*).

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from time to time after the same shall be respectively found and delivered to or placed in the power of the said A. B., his heirs, executors, or administrators," &c.

(*a*) The ensuing proviso is sometimes added,—

Proviso to exonerate covenantor on procuring purchaser to enter into like covenant.

"Provided always, and it is hereby further agreed and declared between and by the said parties to these presents, that if the said C. D., his heirs or assigns, shall at any time hereafter sell and dispose of other parts of the said estates to which the said deeds and evidences relate as aforesaid, and shall and do procure the purchaser or purchasers thereof

Another form.

CXXXVII. And also that he the said A. B., or his heirs or assigns, from time to time, on the request and at the costs and charges of the said C. D. and E. F., their heirs or assigns, shall and will, unless hindered or prevented by force or other inevitable accident, produce or cause to be produced to the said C. D. and E. F., their heirs or assigns, or their solicitor, agent, or counsel, or at or before any court or courts of law or equity in England, or commissioners for the examination of witnesses; and also give and deliver and permit to be examined and attested copies of all, any, or either of the deeds, papers, and writings mentioned or specified in the schedule hereunder written, or hereunto annexed, or any or either of them.

By mortgagee for redelivery of title deeds to mortgagor, on repayment of mortgage money, and for producing them in the meantime (a).

CXXXVIII. Covenant, promise, declare, and agree with and to the said C. D., his heirs and assigns, by these presents, in manner following; that is to say, that upon repayment to the said A. B., his executors, administrators, or assigns, by the said C. D., his heirs, executors, or administrators, of the said sum of £——, mentioned to be the con-

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to enter into a like covenant to that which is hereinbefore contained, with the said A. B., his heirs or assigns, for the production and delivery of copies of the said deeds, evidences, and writings in manner aforesaid, then and in that case the covenant and agreement hereinbefore contained for that purpose shall from thenceforth cease and be void, and these presents shall, at the request of the said C. D., his heirs, executors, or administrators, be delivered up to be cancelled, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

(a) When the mortgagor is a trustee or tenant for life only, or when he has himself covenanted with another for the production of the deeds, or attested copies of them, a covenant of this kind is sometimes entered into by the mortgagee. After briefly stating the mortgage, the following recitals may be premised:—

"And whereas, upon the execution of the said in part recited indenture, the several deeds and evidences of title relating to

sideration money of the said in part recited indenture, with interest for the same after the rate aforesaid, at the times and in the manner in and by the same indenture appointed for payment thereof, together with all costs, charges, and expenses, which at the time of such payment shall be due unto, or have been incurred by, the said A. B., his executors, administrators, or assigns, for or in respect thereof, he the said A. B., his executors, administrators, or assigns, shall and will, at the request of the said C. D., his heirs or assigns, deliver up or cause to be delivered up unto him or them, or unto whomsoever else he or they shall under his or their hand or hands direct or appoint in that behalf, all and singular the deeds, evidences, and writings comprised in the schedule hereunder written or hereunto annexed, whole, uncancelled, unobliterated, and undefaced, accidents by fire or other inevitable cause only excepted; And further that he the said A. B., his heirs, executors, administrators, and assigns, unless prevented by any such cause as aforesaid, shall and will from time to time, and at all times hereafter, in the meantime and until such payment shall or ought to be made, and also so long afterwards, in case of default in payment thereof, as the said deeds, evidences, and writings shall remain in his or their hands, custody, or power, and the said hereditaments and premises shall be subject or liable to any equity or right of redemption in or by the said C. D., his heirs or assigns, at and upon the reasonable request in writing, and at the proper costs and charges in the law of him the said C. D., his heirs, executors, administrators, or assigns, produce and shew forth, or cause to be produced and shewn forth the same deeds,

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the said hereditaments mentioned and set forth in the schedule hereunder written, were delivered to the said A. B.; And whereas the said A. B., at the request of the said C. D., hath agreed to enter into such covenant for redelivering the same unto the said C. D., his heirs and assigns, upon repayment of the said sum of £——, with interest, and for producing them in the meantime as hereinafter is contained."

evidences, and writings, or any of them at any trial, hearing, or examination, in any court or courts of law or in equity, or other court of judicature in any part of the united kingdom of Great Britain and Ireland, or before or for the perusal and inspection of any commissioners, arbitrator or arbitrators lawfully appointed, or in any other such manner as occasion shall require; and also at the like request, costs, and charges of the said C. D., his heirs, executors, administrators, or assigns, cause to be made out and delivered to him or them, or his or their attorney or agent, a true and faithful abstract, and true and attested copies of them, or any of them, or of any part or parts of the same respectively, for the support, manifestation, or justification of the lawful or equitable estate, right, title, or possession of the said C. D., his heirs or assigns, in, to, or respecting the said lands, tenements, or hereditaments comprised or described therein, or in, to, or respecting any part thereof, subject to the said in part recited indenture; and also shall and will, in the meantime, keep the same in his or their custody uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident. Provided always nevertheless, that such production and delivery of copies respectively as aforesaid may, in the opinion of the counsel in the law of the said A. B. (to be certified in writing under his hand, at the expense of the said C. D., his heirs, executors, administrators, or assigns), be made and delivered without endangering, or in anywise prejudicially affecting, the estate, right, title and interest, claim or demand of him the said A. B., his executors, administrators, or assigns, in, to, or upon the said lands and hereditaments, or the security thereby afforded to him or them for the repayment of the said sum of £—— and interest, under or by virtue of the said hereinbefore in part recited indenture, or otherwise howsoever; and so that the deeds, evidences, and writings, or any of them, be not required to be deposited with or intrusted to the care of any person or persons other than some officer or officers of the court of judicature wherein the same may be required to be produced, or the counsel, solicitor, or attor-

ney or agent of and appointed by the said A. B., his heirs, executors, or administrators (*a*).

(*a*) The title-deeds constitute so important a part of the mortgagee's security, that the want of possession of them is considered to be *primâ facie* evidence of fraud; and unless that evidence be rebutted, a second incumbrancer obtaining the title-deeds, and having no notice of the previous charge, will, in equity, take precedence of the first. A mortgagee, therefore, ought always to insist on having the title-deeds themselves, and not a mere covenant for the production of them. If this rule be departed from, the deeds may be deposited with some third person, who should give a written declaration of the purpose of such deposit.

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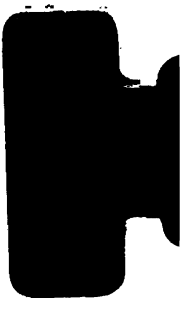
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